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Supreme Court, U.S.
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No. ____________________

IN THE SUPREME COURT OF THE UNITED STATES

LEOPOLD O. V. ENWONWU

Petitioner,

v.

TRANS UNION, LLC., EQUIFAX INFORMATION SERVICES, LLC., WINDING RIVER VILLAGE CONDOMINIUM ASSOCIATION, INC., ALAN ARMSTRONG, JOYCE WEEMS, AND RICHARD M. HOWE

Respondents.

On Petition for a Writ of Certiorari
To The United States Court of Appeals
For The Eleventh Circuit

PETITION FOR WRIT OF CERTIORARI

LEOPOLD O. V. ENWONWU
P. O. Box 567432
Atlanta GA 31156-7432
(678) 795 0840
Pro Se

I. QUESTIONS PRESENTED FOR REVIEW

1. Whether 28 U.S.C. § 1292(a)(1) entitled Petitioner to an appeal from the district court's order dated November 18, 2003, denying the claim for injunctive relief;

2. Whether Fed.R.Civ.P. 54(b) precludes Petitioner's appeal filed on December 1, 2003, prior to the District Court's Final Order And Judgment entered On January 26, 2004.

3. Whether Petitioner's appeal filed on December 1, 2003, was otherwise properly before the Eleventh Circuit Court of Appeals, the absence of a final order and judgment, not withstanding.

4. Whether in light of FRAP 4(B)(iii), Petitioner was required to pay additional fees upon filing the amended notice of appeal on February 23, 2004, within 30 days of the entry of the District Court's judgment on January 27, 2004.

II. LIST OF PARTIES TO THE PROCEEDINGS

The parties to the proceedings are:

Leopold O. V. Enwonwu, (Petitioner), an individual; and

Trans Union, LLC., a consumer reporting agency;
Equifax Information Services, LLC., a consumer reporting agency;
Winding River Village Condominium Association, Inc., a Georgia corporation
Alan Armstrong, an individual, president to the Winding River Village Condominium Association, Inc., at all times material to the action;
Joyce Weems, an individual, secretary to the Winding River Village Condominium Association, Inc., at all times material to the action; and,
Richard M. Howe an individual, attorney to the Winding River Village Condominium Association, Inc., at all times material to the action.

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IV. OPINIONS BELOW

Memorandum Decision of the Eleventh Circuit Court of Appeals sua sponte dismissing Petitioner's appeal entered on 01/20/2004, is attached as Appendix–1.

Memorandum Decision of the Eleventh Circuit Court of Appeals denying petitioner's motion for reconsideration entered on 03/16/2004, is attached as Appendix–2.

Eleventh Circuit Court of Appeals Order of Dismissal entered on 03/17/2004, is attached as Appendix–3.

Order of the United States District Court for the Northern District of Georgia entered on 11/19/2003, is attached as Appendix–4 *et seq*.

Order of the United States District Court for the Northern District of Georgia entered on 01/26/2004, is attached as Appendix–19 *et seq*.

Judgment of the United States District Court for the Northern District of Georgia entered on 01/27/2004, is attached as Appendix–21 *et seq*.

Order of the United States District Court for the Northern District of Georgia entered on 06/14/2004, is attached as Appendix–23 *et seq*.

V. STATEMENT OF JURISDICTION

The Eleventh Circuit by the order entered *sua sponte,* on January 20, 2004, dismissed Petitioner Leopold O. V. Enwonwu's (hereafter Petitioner's) appeal from the order of the United States District Court for the Northern District of Georgia entered on 11/19/2003, stating as its reason that it lacked jurisdiction of the appeal. Appendix 1. Petitioner seeks review of this decision on a writ of certiorari.

On February 9, 2004, Petitioner timely filed a motion for reconsideration. On March 16, 2004, the Eleventh Circuit Court of Appeals entered an order denying the motion for reconsideration. Pursuant to 28 U.S.C. § 2101(c) and under Rule 13.3 of this Court, the petition for certiorari was filed within 90 days of that date, and was corrected and resubmitted within 60 days from June 21, 2004, in accordance with the directives issued by the Clerk of the Supreme Court of the United States.

This Court has jurisdiction under 28 U.S.C. § 1254(1) to review on a writ of certiorari the final decision of a federal court of appeals.

VI. CONSTITUTIONAL AND STATUTORY PROVISIONS

Constitution of the United States, Amendment XIV § 1

42 U.S.C. § 1983 – Civil action for deprivation of rights

28 U.S.C. § 1291 – Final decisions of district courts

28 U.S.C. §1292(1) – Interlocutory decisions

Federal Rules of Appellate Procedure

FRAP Rule 4(a)(2) – Filing before entry of judgment

FRAP Rule 4(a)(4)(B)(iii) – No additional fee is required to file an amended notice of appeal.

VII. STATEMENT OF THE CASE

Petitioner filed Civil Action No. 1:03-CV-0282-ODE in the United States District Court for the Northern District of Georgia on January 31, 2003, to redress the deliberate and wrongful acts of Respondents in violation of his privacy rights protected by provisions of the Fair Credit Reporting Act (hereafter FCRA) 15 U.S.C. § 1681 *et seq.*, and for libel as prohibited by O.C.G.A. § 51-5-1 *et seq.* Petitioner also sought injunctive relief to restrain Trans Union's continued publication of said information libelous of his character.

The action relates to two civil actions variously filed by Winding River Village Condominium Association, Inc., (hereafter Winding River Village), against Petitioner as the then owner of the condominium unit at 360-L Winding River Drive, Atlanta, Georgia 30350. Civil Action No. 96VS119262: Winding River Village Condominium Association, Inc., v. Leopold O. V. Enwonwu and Edith N. Enwonwu, (hereafter C/A # 96VS119262), was filed on October 15, 1996, in the in the State Court of Fulton County, in which a claim for $6,639.47 as unpaid association dues was asserted. The action was subsequently dismissed on January 30, 1997, for want of subject matter jurisdiction. However, Trans Union by October 1996, inaccurately reported this claimed sum in Petitioner's consumer credit file as if it was the judgment of the court; and thereafter variously published this falsehood to no less than twenty four (24) end-users within the two years immediately preceding the filing of Civil Action No. 1:03-CV-0282.

The second action, Civil Action No. E-55868: Winding River Village Condominium Association, Inc., v. Leopold O. V. Enwonwu and Edith N. Enwonwu, (hereafter C/A # E-55868), was filed on February 20, 1997, in the Superior Court of Fulton County equally claiming unpaid association dues, now in the sum of $6,807.47. During the hearing of Petitioner's counterclaims, Winding River Village on February 19, 1998, filed and served a trial brief and motion to dismiss counterclaims on the ground that Petitioner was no longer owner of the property at 360-L Winding River Drive, Atlanta, Fulton County, Georgia 30350. The association relied, without reservation, on a Deed Under Power dated the 3rd day of February 1998, recounting a foreclosure sale, and the transfer of title in the property to Amsouth Bank. This Deed Under Power in its material part at page 3 thereof, was expressed to be subject to *"any assessments, liens, encumbrances. . .and matters of record superior to the security Deed."*

Judgment was thereafter entered by the Superior Court in the sum of $19,555.30 for Winding River Village, and $2,320 for Petitioner. To allow issues of the foreclosure sale then pending in another action be fully resolved, the Superior Court reserved ruling on Petitioner's other counterclaims; which were subsequently dismissed in the Final Order and Judgment entered by the Superior Court on August 25, 1998.[1]

On August 7, 2000, Richard M. Howe, attorney-at-law, for and on behalf of Winding River Village, acting on the instruction of Alan Armstrong and Joyce Weems, served Petitioner with post-judgment discovery. Petitioner responded, albeit, with objections. On or about February 11, 2002, Richard M. Howe on the further instruction of Alan Armstrong and Joyce Weems, equally for and on behalf of Winding River Village, filed a frivolous Summons of Continuing Garnishment No. 02GC020638 (hereafter garnishment) in the State Court of Fulton County, for the sum of $24,026. Because the garnishment was for a dubious purpose, service of the summons was never effected either on Petitioner as the registered agent of the garnishee, Love & Ed, Inc., nor was he personally served as the garnished, prior to counsel's voluntarily dismissal of the continuing garnishment nine days later on February 20, 2002.

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[1] The District Court's conclusion in footnote # 1, at page 2 of the order dated November 18, 2003, that the judgment of the Superior Court of Fulton County in C/A # E-55868 was against Petitioner personally, is not supported by Georgia law. Civil Action No. E-55868 was prosecuted against Petitioner in his capacity as the owner of the referenced property. The action which sought foreclosure of the title to the referenced property, it was not an action *in personam*, as foreclosure actions for improvement of real property are strictly actions in *rem*. Chambers Lumber Co. v. Gilmer, 60 Ga. App. 832, 5 S.E.2d 84 (1939).

Upon foreclosure of Petitioner's title, AmSouth Bank became the party in interest; and should have been joined as a party but for the Superior's recognition that joinder was not feasible. The judgment subsequent entered met the adequacy requirement of O.C.G.A. § 9-11-19(b)(3) because, though the judgment was against Petitioner in name, it was both *de facto* and *de jure*, to be satisfied by AmSouth Bank that had undertaken in the Foreclosure Deed Under Power to satisfy any judgment(s) liens and assessments.

Absent foreclosure, C/A # E-55868 was an exercise in futility. But for decreeing the amount of the Association's lien to be paid by Amsouth Bank as the new owner of the condominium unit, owed association dues, assessments, etc, constitute a lien on the subject property. See O.C.G.A. § 44-3-109(a); Propes v. Stonnington Homeowners Ass'n, 149 Ga. App. 135, 253 S.E.2d 813 (1979).

In the interim, Equifax picked up the garnishment information; and particularly after it had been dismissed, variously published same as part of Petitioner's consumer reports procured by numerous end-users.

Also, in January 2001, Equifax allowed Georgia Power Federal Credit Union to make an inaccurate entry in Petitioner's consumer file, purporting that Appellant filed Chapter 7 Bankruptcy. Without crosschecking to confirm the veracity of this information, Equifax equally published this falsehood as part of Appellant's consumer reports procured by some thirty five (35) end-users.

After variously suffering rejections of his credit applications, Petitioner on December 17, 2002, requested copies of his consumer reports from Trans Union, Equifax and Experian. Thereafter, Petitioner variously disputed the inaccurate entry purporting to be the judgment in C/A # 96VS119262 to Trans Union, and the dismissed garnishment as well as fictitious bankruptcy to Equifax. Petitioner also went one step further to inform Trans Union that C/A # 96VS119262 had been dismissed on January 30, 1997, for want of subject matter jurisdiction.

By a consumer disclosure printed on 01/10/2003, Trans Union notified Petitioner that it had completed "reinvestigation" of the dispute, and that based on its findings, there was no change. The consumer disclosure thereafter reiterated Trans Union's intent to continue the publication of the fictitious money judgment of $6639 purportedly rendered in C/A # 96VS119262 as part of Petitioner's credit history. Subsequent admission at paragraphs 13 through 16 of the Declaration of Eileen Little would confirm that Trans Union abdicated its 15 U.S.C. § 1681i(a)(1)(A) duty to reinvestigate to its public record vendor.

Equifax on the other hand completed its reinvestigations, and sent Petitioner a corrected consumer disclosure showing that the dismissed garnishment summons as well as the fictitious Chapter 7 Bankruptcy had been deleted from his consumer credit file.

On January 31, 2003, Petitioner filed Civil Action No. 1:03-CV-0282-ODE in the United States District Court for Northern Georgia. Again, at paragraph 16 of its Answer, Trans Union admitted that on December 23, 2002, Petitioner gave notice that C/A # 96VS119262 was dismissed for want of subject matter jurisdiction.

On March 11, 2003, Petitioner moved for partial summary judgment. Petitioner also filed a motion to amend the complaint, attaching the Amended Complaint to the motion, which was unopposed, and was granted by the court.

In response to the summary judgment motion, Trans Union attached as Exhibit "A" to the Declaration of Eileen Little a paper writing purportedly received from its said third party public record vendor, containing the words *"Not Satisfied."* Relying on this statement, Trans Union sought disingenuous to weave a contention that its misrepresentation since October 1996 that a money judgment in the sum of $6639 was entered in C. A. # 96VS119262 was accurate in so far as Winding River Village subsequently obtained judgment in C/A # E-55868 on February 26, 1998. To support this misconception, Trans Union referred to both cases as if only one judgment had been rendered, and in so doing, persisted in using the epithets "Winding River" or "Condo" judgment.

At paragraph 17 of the said Declaration of Eileen Little, Trans Union stated that on February 7, 2003, it deleted the fictitious money judgment from Appellant's file. However, till date, Trans Union remains in violation of § 1681i(a)(6)(A), as it is yet to provide Appellant with a copy of the corrected consumer disclosure.

Equifax in its response to Petitioner's motion for summary judgment relied on the Affidavit of Alicia Fluellen, admitting the following:

1) Equifax contracted with a (nameless) public record vendor for the supply of public record information. [At paragraph 8].

2) Contrary to the FCRA that makes no exceptions, Equifax determined which banks, merchants, and creditors it considered reliable sources of credit information. [At paragraph 4].

3) Equifax affording Georgia Power Credit Union unlimited and unrestricted access to upload falsehood into its automated credit reporting system; to wit: that Petitioner had filed Chapter 7 bankruptcy. [At paragraphs 4 and 5].

4) So long as its fees were paid, Equifax without vetting information uploaded by such banks, merchants, and creditors into its database, allowed end-users equally unlimited access to such inaccurate information it had so complied as Petitioner's

consumer report/file. [At paragraph 5].

5) Equifax did not put in place any procedures to ensure accurate recording of the date(s) of receipt of information, exemplified by the fact that Equifax has no record of the date it received the garnishment information from its purported public record vendor. [At paragraph 8].

6) Equifax also admits that it did not put in place any procedures to track court proceedings. Hence, it never received notice from its said public record vendor that the garnishment had been voluntarily dismissed,[2] [at paragraph 9], only nine days after it was filed.[3]

7) With the intent to deny liability for publishing defamatory material, Equifax deliberately violated § 1681g(a)(3) by providing Petitioner with a list of entities that requested his credit file as opposed to a list of entities that procured copies of Petitioner's

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[2] Pursuant to § 1681e(b) Equifax was obligated to set up procedures designed to track the progress of the garnishment procedure. See Henson v. CSC Credit Servs., 29 F.3d 280, ---, (7th Cir. 1994); citing Henson v. CSC Credit Servs., 830 F. Supp. 1204, 1207 (S.D. Ind. 1993); where it was held that for purposes of the FCRA, a consumer report is inaccurate in so far as it is misleading and/or incomplete. See also Jones v. Federated Financial Reserve Corp., 144 F.3d 961 (6th Cir. 1998); citing Pinner v. Schmidt, 805 F.2d 1258, 1261 (5th Cir. 1986); which holds that a reporting of public record information must be *"correct, relevant, and up-to-date."*

[3] Contrary to the District Court's finding that Equifax was not obligated *"to affirmatively check, without notice, whether the [garnishment] information was stale,"* the case of Colletti v. Credit Bureau Servs., Inc., 644 F.2d 1148, 1151 (5th Cir. 1981), relied on, deals with credit account information defined in § 1681a(p)(2), for which no liability attaches until after notice of dispute is provided in accordance with 1681s-2(3). Equifax is however liable for publication of inaccurate public record information; the fact that such information was received from its third party public record vendor, notwithstanding; as Equifax is liable for the acts and omissions of its third party. Jones v. Federated Financial Reserve Corp., 144 F.3d 961 6th Cir. 1998).

consumer report. [At paragraphs 12 and 13].

Equally noteworthy is that Equifax deliberately libeled Petitioner, as it went out of its way to publish the garnishment while it never published the substantive judgment rendered by the Superior Court Fulton County in C/A # E-55868, as part of Petitioner's consumer report.

Alan Armstrong and Joyce Weems as officers and members of the board of directors of Winding River Village Condominium Association, Inc., admitted retaining the services of Richard M. Howe, attorney-at-law, to pursue collection of the judgment debt in C/A # E-55868 from Petitioner. Richard M. Howe on the other hand admitted at paragraph 7 of his affidavit to invading Petitioner's privacy by procuring Petitioner's Equifax consumer report on March 26, 2002; albeit, after voluntarily dismissing the nine-day-old continuing garnishment summons on February 20, 2002.[4]

Richard M. Howe contended that he obtained Petitioner's Equifax consumer report for a legitimate business need of collecting a purported "judgment debt."[5] It is however clear that

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[4] Pursuant to O.C.G.A. § 10-6-60, Winding River Village, Alan Armstrong and Joyce Weems are vicariously liable for the acts and omissions of their said agent, Richard M. Howe. Multi-State Contracting Corp. v. Midwest Indemnity Corp., 252 Ga. App. 449 (556 S.E.2d 524) (2001); Fountainhead Development Corp., Inc. v. Dailey, 2003 Ga. App. LEXIS 1205 (2003 Fulton County D. Rep. 2905). See also Restatement (Second) Agency § 8 at page 30 (1958); Minskoff v. American Express Travel Related Servs. Co., Inc., 98 F.3d 703, 708 (2nd Cir. 1996)]; Jones v. Federated Financial Reserve Corp., 144 F.3d 961 (6th Cir. 1998); Hartman v. Lisle Park Dist., 158 F. Supp.2d 869 (N.D.Ill. 2001).

[5] § 1681b(a)(3)(F) that allows for the procurement of a consumer report for a legitimate business need does not avail Respondents because that provision is circumscribed by its intended use for a business transaction

[Continued on the next page]

he never sought to familiarize himself with the facts of the case. Otherwise, he would have recognized that the judgment was not enforceable against Petitioner; particularly in light of the undertaking by Amsouth Bank in the Foreclosure deed.

Because the garnishment summons was voluntarily dismissing the nine-day-old after it was filed, Petitioner sought to further amend the complaint to include the additional charge of libel s against Winding River, Alan Armstrong, Joyce Weems, and Richard M. Howe; as in all probability, a garnishment summons, not served on garnishee or garnished, but dismissed only nine days after it was filed, was not published until after it was dismissed, and as such would not have be protected by the immunity enjoy by court proceedings. Petitioner also sought to introduce charges against Trans Union for violation of 15 U.S.C. § 1681i(a)(6), and for refusing to adjust his credit score; as well as against Equifax's violation of 15 U.S.C. § 1681g(a)(3), and for retaliation by the continued discriminatory conduct in denying access to his consumer report to entities from whom Petitioner sought credit. No responsive pleadings were filed in opposition to the motion.

As the violations of § 1681i(a)(6) and § 1681g(a)(3), were admitted in existing pleadings, Petitioner filed a supplemental brief in support of his motion for summary judgment detailing grounds

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[Continued from the previous page]
initiated by the consumer, or to review an account to determine whether the consumer continues to meet the terms of the account. Stretching this provision beyond its intended parameters to include enforcements of judgments runs contrary to, and do violence to the spirit and intent of the Fourth, Fifth, and Fourteenth Amendments to the U.S. Constitution as protecting property and privacy rights. While a lawsuit occasionally may give rise to a *"legitimate business need"* for a consumer report, see Spencer v. TRW, Inc., 92 F.3d 380 (6th Cir. 1996), trial preparations generally does not fall within the scope of § 1681b. See Mone v. Dranow, 945 F.2d 306, 308; Houghton v. New Jersey Mfrs. Ins. Co., 795 F.2d 1144, 1149; Allan v. Calvo, 832 F.Supp. 301, 303 (D. Or. 1993).

entitling him to summary judgment of those additional claims. Again, no responsive pleadings were filed.

In preparation for trial of the anticipated quantum of damages entitled, Petitioner sought to obtain subpoenas to compel third party disclosures. Because The District Court for Northern Georgia disparately required *pro se* litigants to firstly seek and obtain approval of the presiding judge prior to the issuance of subpoenas to compel discovery from third parties, Petitioner sought clearance for subpoenas to issue to compel said third party discovery, both by letter and by motion.

Respondents (Richard M. Howe, not included) after filing their joint motion to stay discovery, selectively filed non-responsive responses to Petitioner's discovery requests. As a result, Petitioner by letters dated May 12, 2003, gave notice of intention to seek sanctions, and on June 25, 2003, filed a motion, accordingly.

By an order dated November 18, 2003, the District Court subsumed the responses filed by Respondents to Petitioner's motion for partial summary judgment to be motions to dismiss otherwise cross-motions for summary judgment; and thereupon dismissed all of Petitioner's claims save for the 15 U.S.C. § 1681e(b) claim against Trans Union. The District Court also granted Respondent's joint motion to stay of discovery. Thereafter, the District Court denied Petitioner's motion for summary judgment, motion for leave to further amend the complaint, motion to compel discovery and for sanctions, and motion for subpoenas to issue to compel third party disclosures. Further thereto, the District Court *sua sponte* abridged time Petitioner was otherwise entitled to conduct discovery but for Respondents' said joint motion for stay of discovery, by ordering the remaining parties, namely: Trans Union and Petitioner to conclude discovery by December 19, 2003, and thereafter file a consolidated pretrial order no later than January 19, 2004.

Dissatisfied Petitioner filed his notice of appeal on December 1, 2003.

To err on the side of caution, Petitioner also filed a motion for leave to appeal, and for stay of further proceedings in the District Court pending appeal. To meet obligations on his part towards perfecting his appeal, Petitioner paid the necessary appeal fees on December 16, 2003. Confused by the Georgia State appellate procedural requirement that permission to appeal from interlocutory orders was sought from the appellate court, to err on the side of caution, Petitioner on December 22, 2003, filed a motion for permission to appeal in the Eleventh Circuit. This motion was rejected and returned by the Eleventh Circuit as unnecessary.

In the interim, Respondents, Winding River Village Condominium Association, Inc., Alan Armstrong, and Joyce Weems had filed a joint motion for entry of final judgment on December 4, 2003.

Upon seeking clarification as to why his application was returned, Petitioner was informed that the appeal was under review to determine whether the Eleventh Circuit had jurisdiction of the appeal. Based on the advice of the deputy clerk, Petitioner filed a Motion for Direction; and therein listed grounds upon which he believed the Eleventh Circuit had jurisdiction of the appeal. These included that the district court order was equally reviewable as a collateral order.

This motion was equally rejected and returned; this time, simultaneously with an order entered on January 20, 2004, wherein the Eleventh Circuit, *sua sponte*, dismissed the appeal, stating as reason for its action, that it lacked jurisdiction of the appeal.

Without ruling on Petitioner's earlier filed motion for leave to appeal and for stay of further proceedings, the District Court granted the unopposed motion by Winding River Village Condominium Association, Inc., Alan Armstrong, and Joyce Weems, entering a Final Order on January 26, 2004, and Judgment on January 27, 2004, regarding the dismissal of Petitioner's various claims, the 15 U.S.C. § 1681e(b) claim against Trans Union, excepted.

On February 9, 2004, petitioner filed a motion for reconsideration of the order dismissing his appeal, and therein relied on the spirit and intent of FRAP 4(a)(2), which provides that *"[a] notice of appeal filed after the court announces a decision or order – but before the entry of the judgment or order – is treated as filed on the date of and after the entry."* This motion was denied by an order entered on March 16, 2004.

Petitioner also filed an amended notice of appeal on February 23, 2004, to reflect the Final" Order and "Judgment" entered by the district court on February 9, 2004. The Eleventh Circuit treated the amended notice of appeal as if it was a fresh notice of appeal, and required Petitioner to pay fresh fees of $250.00. While Petitioner does not qualify to bring an application to proceed in *forma pauparis*, Petitioner equally could not immediately afford to pay this sum. As a result, on March 17, 2004, the Eleventh Circuit dismissed the amended notice of appeal.

Dissatisfied, Petitioner has brought instant petition by which the Supreme Court of the United States is requested to grant certiorari to the Eleventh Circuit Court of Appeals so as to review this ruling that conflicts with settled earlier opinions of the United States Supreme Court, the Supreme Court of the State of Georgia, and the opinions of other circuits of the United States Courts of Appeals; and by which erroneous ruling the Eleventh Circuit pronounce on Petitioner's appeal as premature, and as such, declined jurisdiction to entertain same.

It remains to be added that the District Court on June 14, 2004, finally ruled denying Petitioner's motion for leave to appeal, and for stay of further proceedings.

ARGUMENT AND CITATION OF AUTHORITIES

On January 20, 2004, the Eleventh Circuit Court of Appeals after rejecting to countenance Petitioner's motion for direction, which identified why the District Court's order is a collateral order, declined jurisdiction of Petitioner's appeal, ruling as follows:

> *This appeal is DISMISSED, sua sponte, for lack of jurisdiction. The district court's November 18, 2003, order is not final and appealable because it did not dispose of all of the claims of all of the parties to this action. See 28 U.S.C. § 1291; Williams v . Bishop, 732 F.2d 885, 885-86 (11th Cir. 1984). Further, the district court did not certify the order for immediate review pursuant to Fed.R.Civ.P. 54(b). See In re Yam Processing Patent Validity Litigation, 680 F.2d 1338, 1340 (11th Cir. 1982).*

Because the foregoing opinion did not address the question of Petitioner's right of appeal under 28 U.S.C. §§ 1292(a)(1), from the District Court's denial of his prayer for injunctive relief, Petitioner brought the motion for reconsideration; and therein, specifically addressing this question. By the opinion handed down on March 16, 2004, the Eleventh Circuit further ruled as follows:

> *"To the extent that the November 18, 2003, order denied Enwonwu's request for injunctive relief, it is construed as an order denying a temporary restraining order, and thus, is not final or immediately appealable. See 28 U.S.C. §§ 1291, 1292(a)(1); McDougald v.*

> *Jenson, 786 F.2d 1465, 1472 (11th Cir 1986); Fernandez-Roque v. Smith, 671 F.2d 426,429 (11th Cir.1982). Additionally, because the district court has not certified the November 18, 2003, order pursuant to Fed.R.Civ.P. 54(b) when Enwonwu filed his notice of appeal on December 1, 2003, we lack jurisdiction over this premature appeal."*

The Fourteenth Amendment to the United States Constitution, at section 1 thereof, provides for the equal Protection of the Law in the following words:

> *"All persons born or naturalized in the United States and subject to the jurisdiction thereof are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."*

In all humility, it is respectfully submitted that Petitioner acquired the right to be heard on the merits of his appeal upon the timely filing of his notice of appeal, and payment of docketing and filing fees. Therefore, the *sua sponte* denial of this acquired right of appeal without affording Petitioner opportunity to be heard, amounts to denial of procedural due process. This is supported by the findings in Hamdi v. Rumsfeld, 124 S. Ct. 2633 (159 L. Ed. 2d 578) (2004), where this esteemed Court revisited the question of denial of due process stating as follows:

> *"[I]t is clear that commitment for any purpose constitutes a significant [*41] deprivation of liberty that requires due process protection," Jones v. United States, 463 U.S. 354, 361, 77 L. Ed 2d 694, 103 S. Ct. 3043*

(1983) (emphasis added; internal quotation marks omitted), and at this stage in the Mathews calculus, we. consider the interest of the erroneously detained individual. Carey v. Piphus, 435 U.S. 247, 259, 55 L. Ed 2d 252, 98 S. Ct. 1042 (1978) ("Procedural due process rules are meant to protect persons not from the deprivation, but from the mistaken or unjustified deprivation of life, liberty, or property"); see also Id. At 266, 55 L.Ed. 2d 252, 98 S.Ct. 1042 (noting "the importance to organized society that procedural due process be observed," and emphasizing that "the right to procedural due process is 'absolute' in the sense that it does not depend upon the merits of a claimant's substantive assertions").

Out of the foregoing rulings of the Court of Appeals have crystallize the following questions, the answers to which Petitioner now rests his petition to show that had he been afforded a hearing, the Eleventh Circuit Court of Appeals would have reached the conclusion that the appeal was justiciable:

1) Whether the Eleventh Circuit Court of Appeals misconstrued Petitioner's prayer for injunctive relief to be a request for a temporary restraining order;

2) Whether Petitioner's premature notice of appeal matured upon the District Court's entry of the Final Order and Judgment on January 26, and 27, 2004, respectively;

3) Whether Petitioner was otherwise entitled to an appeal from the collateral order of the District Court; and,

4) Whether upon filing an amended notice of appeal Petitioner was required to pay additional fees.

1. Petitioner Is Pursuant To 28 U.S.C. §1292(1) Entitled To An Appeal From The District Court's Order Of November 18, 2003, Denying The Claim For Injunctive Relief.

At paragraph 2 of the Amended Complaint, Petitioner invoked the diversity jurisdiction of the District Court under 28 U.S.C. § 1332,[6] specifically for the claim of injunctive relief against Trans Union, the only non-resident. By virtue of 28 U.S.C. § 1652,[7] the applicable Georgia law is O.C.G.A. § 9-5-10,[8] which warranted the issuance of a perpetual injunction to restrain Trans Union, LLC, from continued publication of false information libelous of petitioner's character. The relief sought remains as set out at paragraph 34 of the Amended Complaint; as follows:

> *"a) To grant an injunction restraining Defendant Trans Union, LLC., from the continued retention and/or publication of the wrongful and erroneous statement purportedly obtained from public record, described as the judgment in Civil Action File No. 96VS119262 by the Superior Court in October 1996, in Plaintiff's consumer file and/or any other medium to any persons/ entities,*

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[6] A "corporation of a foreign State is, for purposes of jurisdiction in the courts of the United States, to be deemed, constructively, a citizen or subject of such State." Steamship Co. v. Tugman, 106 U.S. 118, 121 (27 L. Ed. 87, 1 S. Ct. 58) (1982); cited with approval in JPMorgan Chase Bank v. Traffic Stream (BVI) Infrastructure Ltd., 536 U.S. 88 (153 L. Ed. 2d 95, 122 S. Ct. 2054) (2002).

[7] See Esteban Ortiz et. al. v. Fibreboard Corp., et al., 527 U.S. 815 (144 L. Ed. 2d 715; 119 S. Ct. 2295) (1999).

[8] *"Federal courts sitting in diversity apply state substantive law and federal procedural law."* Gasperini v. Center for Humanities, Inc., 518 U.S. 415, 427 (135 L. Ed. 2d 659, 116 S. Ct. 2211, 2219) (1996); cited in Esfeld et. al. v. Costa Crociere S.P.A., 289 F.3d 1300 (11th Cir. 2002).

whom/whatsoever."

The doctrine of *stare decisis* dictates the presumption that the findings as contained in the trial court's order are correct until examined on appeal, and set aside. As such, the District Court's ruling that *"Without reaching the issue of whether injunctive relief is available under the FCRA, Trans Union's February 7, 2003 deletion of the entry from Plaintiff's file renders the request for injunctive relief moot,"* stands as it is. *Prima facie*, this is proof enough that an injunctive relief was sought; thus grounding an appeal under 28 U.S.C. §1292(1). Thereafter, whether the District Court rightly found that Trans Union (without tangible proof) deleted the entry from Petitioner's file, and whether Petitioner had recourse to injunctive relief otherwise than under the FCRA, remained issues to be determined by the appeal.

In particular, the earlier decisions of McDougald v. Jenson, 786 F.2d 1465, 1472 (11th Cir 1986), and Fernandez-Roque v. Smith, 671 F.2d 426,429 (11th Cir.1982), relied on, do not support the conclusion reached by the Eleventh Circuit, as those decisions, for purposes of bringing an appeal under 28 U.S.C. §1292(1), specifically distinguish between a temporary restraining order (TRO) and a preliminary injunction. No doubt, a TRO is not generally appealable. McDougald v. Jenson, 786 F.2d 1465, 1473 (11th Cir 1986). However, *"'if a TRO goes beyond simply preserving the opportunity to grant affirmative relief and actually grants affirmative relief, an appeal may be taken.' See Adams v. Vance, 570 F.2d 950, 953 (D.C. Cir.1978); Belknap v. Leary, 427 F.2d 496, 498 (2nd Cir. 1970); Stricklin v. Regents of University of Wisconsin, 420 F.2d 1257, 1259 (7th Cir. 1970)."*

Furthermore, *"[i]n determining whether to consider an order as a TRO or as a preliminary injunction for purposes of determining its appealability, courts look to such factors as the duration of the order, whether it was issued after notice and a hearing, and the showing made-to obtain the order; the lengthier* *the duration of the order and the more stringent the procedural safeguards employed in the district court, the more likely a TRO will be considered a preliminary injunction."*[9] See McDougald v. Jenson, at 1473.

Again, *"[o]ne inherent characteristic of a temporary restraining order is that it has the effect of merely preserving the status quo rather than granting most or all of the substantive relief requested in the complaint."*[10] Fernandez-Roque v. Smith, 671 F.2d at 429. Again, Petitioner did not seek to preserve the status quo by seeking an order commanding the removal of an entry from his consumer credit file.

It is conceded that for purposes of the appeal, denial of a permanent (perpetual) injunction is deemed interlocutory since the District Court's Order entered on November 19, 2003, did not dispose of Petitioner's 15 U.S.C. § 1681e(b) claim against Trans Union. However, that is no a basis for the Eleventh Circuit's conclusion *"that the November 18, 2003,. . .is construed as an order denying a temporary restraining order,"* as that amounts to juxtaposing two different ends of the injunctive relief spectrum.

The injunctive relief sought from the District Court was of indefinite duration, and was not meant to maintain the status quo. As such, there is no basis to construe the prayer to be one for a temporary restraining order on so far as Petitioner by filing the motion for summary judgment sought a determination of the case on its merit.[11].

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[9] See also Dilworth v. Riner, 343 F.2d 226,229 (5th Cir. 1965)."

[10] See also in Byelic v. Michel Herbelin USA, Inc., 275 Ga. 505 (570 S.E.2d 307) (2002), citing Atlanta Dwellings, Inc. v. Wright, 272 Ga. 231, 233 (527 S.E.2d 854) (2000), where the Georgia Supreme Court in explaining O.C.G.A. § 9-11-65, (similar in all respects to Fed.R.Civ.P. 65), stated that *"[t]he purpose for granting interlocutory injunctions is to preserve the status quo, as well as balance the conveniences of the parties, pending a final adjudication of the case."*

In the absent of any evidence suggesting the contrary, Petitioner remains entitled to an appeal from the denial of his prayer for a perpetual injunctive relief; as 28 U.S.C. § 1292(a)(1) warrants an appeal to the courts of appeals from *"interlocutory orders of the district courts of the United States. . .granting, continuing, modifying, refusing or dissolving injunctions, or refusing to dissolve or modify injunctions, except where a direct review may be had in the Supreme Court."* United States v. Oakland Cannabis Buyer's Cooperative et al., 532 U.S. 483 (149 L. Ed. 2d 722; 121 S. Ct. 1711) (2001); El Paso Natural Gas Co., et al. v. Laura Neztsosie et al., 526 U.S. 473 (143 L. Ed. 2d 635, 119 S. Ct. 1430) (1999); California v. American Stores Co. et al., 495 U.S. 271 (109 L. Ed. 2d 240, 110 S. Ct. 1853) (1990).

2. Fed.R.Civ.P. 54(b) Does Not Precludes The Appeal Filed On December 1, 2003, Prior To The District Court's Final Order And Judgment Respectively Entered On January 26, and 27, 2004.

Argument advanced above in regard to Petitioner's 28 U.S.C. §1292(1) right of appeal from the denial of his prayer for injunctive relief is by this reference incorporated hereof as if set forth herein.

The second arm of the ruling of the Eleventh Circuit Court of Appeals in declining jurisdiction reads as follows:

> *"Additionally, because the district court has not*

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[11] See Celotex Corp v. Catrett, 477 U.S. 317, 327 (1986), where summary judgment procedure was described as *"designed to secure a just, speedy and inexpensive determination of every action;"* and mirrors the standard for a directed verdict as requiring the trial judge to direct a verdict if, under the governing law, there can be but one reasonable conclusion as to the verdict. Anderson v. Liberty Lobby, Inc., 477 U.S.242, 250 (1986).

certified the November 18, 2003, order pursuant to Fed.R.Civ.P. 54(b) when Enwonwu filed his notice of appeal on December 1, 2003, we lack jurisdiction over this premature appeal."

28 U.S.C. § 1291 in providing for appeals from the final decisions of the District Court, in its material part reads:

> *"The courts of appeals (other than the United States Court of Appeals for the Federal Circuit) shall have jurisdiction of appeals from all final decisions of the district courts of the United States."*

This provision has continued to receive the consistent blessing of this Honorable Court to mean that not only the final judgment of the trial court, but any final decision that *"ends the litigation on the merits and leaves nothing for the court to do but execute the judgment,"* is appealable Catlin v. United States, 324 U.S. 229, 233 (89 L. Ed. 911, 65 S. Ct. 631) (1945); Firestone Tire & Rubber Co. v. Risjord, 449 U.S. 368 (66 L. Ed. 2d 571, 101 S. Ct. 669) (1981); Richardson- Merrell Inc. v. Koller, 472 U.S. 424, 430 (86 L. Ed. 2d 340, 105 S. Ct. 2757) (1985); Van Cauwenberghe v. Biard, 486 U.S. 517, 521-522 (100 L. Ed. 2d 517, 108 S. Ct. 1945) (1988); Midland Asphalt Corp. v. United States, 489 U.S. 794 (103 L. Ed. 2d 879, 109 S. Ct. 1494) (1989); Digital Equipment Corp. v. Desktop Direct, Inc., 511 U.S 863, 867 (128 L. Ed. 2d 842, 114 S. Ct. 1992) (1994); Quackenbush v. Allstate Ins. Co., 517 U.S. 706, 712 (135 L. Ed. 2d 1, 116 S. Ct. 1712) (1996); Cunningham v. Hamilton County, Ohio, 527 U.S. 198 (144 L. Ed. 2d 184, 119 S. Ct. 1915) (1999). See specially the case of United States et al v. Laddie F. Jose, Trustee of Jose Business Trust, et al, 519 U.S. 54 (117 S. Ct. 463, 136 L. Ed. 2d 364) (1996), where it was held that *"[w]ith that disposition, the District Court completed its adjudication."*

Fed.R.Civ.P. 54(b) allows a district court dealing with multiple claims or multiple parties to direct the entry of final judgment as to fewer than all of the claims or parties. To do so, the court must make an express determination that there is no just reason for delay. Reiter v. Cooper, 507 U.S. 258 (113 S. Ct. 1213; 122 L. Ed. 2d 604) (1993). This power is largely discretionary, see Curtiss-Wright v. General Electric Co., 446 U.S. 1 (100 S. Ct. 1460; 64 L. Ed. 2d 1, 10) (1980); to be exercised in light of *"judicial administrative interests as well as the equities involved,"* id, at 8, and giving due weight to *"the historic federal policy against piecemeal appeals," ibid.* (quoting Sears Roebuck & C0 v. Mackey, 351 U.S. 427 (100 L. Ed. 1297, 76 S. Ct. 895) (1956).

By its subsequent order entered on January 26, 2004, the District Court admitted it earlier error in failing to enter a final judgment as to the claims it dismissed by the order entered on November 19, 2003; as follows:

> *"In the present matter, the only remaining claim concerns the reasonableness of reporting procedures employed by Defendant Trans Union, LLC as determined by the Fair Credit Reporting Act, 15 U.S.C. § 1681e(b). This claim is unrelated to the merits of the dismissed claims, and there is no just reason for delaying entry of final judgment as to all claims dismissed by this Court's Order of November 19, 2003. Consequently, Defendants' motion for entry of final judgment is granted."* [Emphasis provided].

By the foregoing, the District Court recognizes that it abused judicial discretion in failing to immediately enter judgment upon dismissing Petitioner's said claims. Granted, petitioner's notice of appeal filed on December 1, 2003, was prior to the Final Order and Judgment entered on January 26 and 27, 2004, and as such was premature; however, Fed.R.Civ.P. 54(b) does not defeat this appeal, because in Firstier Mortgage Co., AKA Realbanc, Inc., v. Investors Mortgage Ins. Co., 498 U.S.

269 (112 L. Ed. 2d 743, 111 S. Ct. 648) (1991), this Court held that *"[u]nder [FRAP] Rule 4(a)(2), a premature notice of appeal does not ripen until judgment is entered. Once judgment is entered, the Rule treats the premature notice of appeal 'as filed after such entry.' Thus, even if a bench ruling in a given case were not "final" within the meaning of § 1291, Rule 4(a)(2) would not render that ruling appealable in contravention of § 1291. Rather, it permits a premature notice of appeal from that benchruling to relate forward to judgment and serve as an effective notice of appeal from the final judgment."*[12]

Based on the foregoing, and particularly upon Petitioner's motion for reconsideration in which the District Court's final order directing entry of judgment was specifically brought to its notice, the Eleventh Circuit Court of Appeals should have allowed the appeal proceed to be determined on its merit.

3. Petitioner's Notice Of Appeal From The Final And Collateral Order Of The District Court Dated November 18, 2003, Was Properly Filed On December 1, 2003.

In Abney et al. v. United States, 431 U.S. 651 (52 L. Ed. 2d 651, 97 S. Ct. 2034) (1977), the U.S. Supreme Court reiterating its earlier interpretation of 28 U.S.C. § 1291; stating as follows:

> *"§ 1291 did not uniformly limit appellate jurisdiction to 'those final judgments which terminate an action.' Cohen v. Beneficial Industrial Loan Corp., 337 U.S. 541 at 545 (1949); Eisen v. Carlisle & Jacquelin, 417 U.S.*

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[12] Variously followed in Good v. Ohio Edison Co., 104 F.3d 96 (6th Cir. 1997); J. G. Peta, Inc. v. Club Protector, Inc., et al., 65 Fed. Appx. 724; 2003 U.S. App. LEXIS 9783 (Federal Cir. 2003); Local Union No. 38, Sheet Metal Workers' International Association, AFL-CIO v. Custom Air Systems, Inc., 333 F.3d 345 (2nd Cir. 2003); United States of America v. Cedric Richardson, 74 Fed. Appx. 565 (2003 U.S. App. LEXIS 18751) (6th Cir. 2003).

> *156, 171 (1974). Rather as Mr. Justice Jackson, the author of Cohen, later pointed out: '[I]t is a final decision that Congress has made reviewable. . . While a final judgment always is a final decision, there are instances in which a final decision is not a final judgment.' Stack v. Boyle, 342 U.S. 1, 12 (1951)."*

In Digital Equipment Corp. v. Desktop Direct, Inc., 511 U.S. 863 (128 L. Ed. 2d 842, 114 S. Ct. 1992) (1994), this Honorable Court equally ruled as follows:

> *"We have repeatedly held that the statute entitles a party to appeal not only from a district court decision that 'ends the litigation on the merits and leaves nothing more for the court to do but execute the judgment,' Catlin v. United States, 324 U.S. 229, 233 (89 L. Ed. 911, 65 S. Ct. 631 (1945), but also from a narrow class of decisions that do not terminate the litigation, but must, in the interest of 'achieving a healthy legal system,' cf. Cobbledick v. United States, 309 U.S. 323, 326 (84 L. Ed 783, 60 S. Ct. 540) (1940), nonetheless be treated as 'final.' The latter category comprises only those district court decisions that are conclusive, that resolve important questions completely separate from the merits, and that would render such important questions effectively unreviewable on appeal from final judgment in the underlying action."*

See also Swint v. Chambers County Commission, et al., 514 U.S. 35 (131 L. Ed. 2d 60, 115 S. Ct. 1203) (1995), where it was also held as follows:

> *"The collateral order doctrine is best understood not as an exception to the 'final decision' rule laid down by Congress in § 1291, but as a 'practical construction' of it." Digital Equipment Corp. v. Desktop Direct, Inc., 511 U.S. 863, 867 (128 L. Ed. 2d 842, 114 S. Ct. 1992) (1994)*

> *(quoting* Cohen, 337 U.S. at 546*). In Cohen, we held that § 1291 permits appeals not only from a final decision by which a district court disassociates itself from a case, but also from a small category of decisions that, although they do not end the litigation, must nonetheless be considered "final."* Id., at 546. *That small category includes only decisions that are conclusive, that resolve important questions separate from the merits, and that are effectively unreviewable on appeal from the final judgment in the underlying action. Ibid."*

In applying the foregoing principles to the case in point, determination of what constitutes a collateral order is to be given a *"practical rather than a technical construction."* Cohen v. Beneficial Industrial Loan Corp., at 546. As such, recourse is to page 17 of the order entered on November 19, 2003, where the District Court summed up it ruling as follows:

> *"For the reasons set forth above, Plaintiff's motion for leave to further amend [#29] is DENIED, Plaintiff's motion for partial summary judgment [#10] is DENIED, all claims against Defendants are dismissed except Plaintiff's U.S.C. § 1681e(b) claim against Defendant Trans Union, Defendants' joint motion to stay discovery [#23] is GRANTED, Plaintiff's motion to obtain clearance for subpoenas [#34] is DENIED, Plaintiff's motion to compel discovery and for sanctions [#35] is DENIED, and Plaintiff's motion for issuance of subpoenas for third party disclosures [#36] is DENIED. Discovery shall proceed between the remaining parties to this action for a thirty-day period commencing from the date of entry of this order to close December 19, 2003. A consolidated pretrial order shall be filed no later than January 19, 2004."*

Based on the foregoing, the District Court's denial of petitioner's (1) motion for leave to further amend the complaint, (2) motion for issuance of subpoenas to compel third party disclosures to issue; and (3) the *sua sponte* abridgment of entitled discovery time to thirty days, though contained in an interlocutory order, (particularly in regard to Trans Union), fall within and meet those condition of the collateral order exception; as by said decision, the District Court: (a) conclusively determined the various disputed questions, (b) resolved those important issue completely separate from the merits of the action; and, (c) those issues remained effectively unreviewable on appeal from a final judgment. See Sells v. U.S., 539 U.S. 166 (123 S. Ct. 2174,156 L. Ed. 2d 197) (2003); Winston v. Lee, 470 U.S. 753, 759 (84 L. Ed. 2d 662, 105 S. Ct. 1611) (1985); Coopers & Lybrand v. Livesay, 437 U.S. 463, 468 (57 L. Ed. 2d 351, 98 S. Ct. 2454) (1978); Behrens v. Pelletier; 516 U.S. 299 (1996); Gulfstream Aerospace Corp. v. Mayacomas Corp., 485 U.S. 271, 276 (1988).

4. Petitioner's Amended Notice Of Appeal Does Not Attract Additional Docketing And Filing Fees.

The purpose of Fed.R.Civ.P. 54(b) remains to discourage piecemeal appeals. However, as this Honorable Court stated in Curtiss-Wright v. General Electric Co., 446 U.S. 1 (100 S. Ct. 1460; 64 L. Ed. 2d 1, 10) (1980), Fed.R.Civ.P. 54(b) operates to serve *"judicial administrative interests as well as the equities involved,"* id. at 8; giving due weight to *"the historic federal policy against piecemeal appeals," ibid.* (quoting Sears Roebuck & C0 v. Mackey, 351 U.S. 427 (100 L. Ed. 1297, 76 S. Ct. 895) (1956).

The fact that the District Court's final order entered on January 26, 2004, did no more than decree the entry of judgment that should have been contained in its earlier order of November 19, 2003, is reemphasized. Since the primary purpose of prohibiting piecemeal appeals is to facilitate the speedy adjudication of cases, this failing of the District Court did not serve the cause of justice, as summary judgment is adjudication on the merit. Moreover, as a result of the District Court's failing, the competing interests variously sought to move on by bringing different motions: Petitioner by seeking leave to appeal, (albeit, unnecessarily), and Respondents in seeking entry of final order.

The purpose, spirit and intent of FRAP 4(a), generally, is to allow for regularization of any anomalies or errors, if any, so as to proceed to the hearing of an appeal on its merits.[13] With all due respect to the Eleventh Circuit, payment of docketing and filing fees which does not to meet the cost of adjudication of the issues sought to be litigated, (as the opinion of those eminent jurists are worth a lot more than the fees so paid), should not be grounds for the denial of an appeal. Rather, the token is in demonstration of the desire to go forward with the litigation. Therefore, upon Petitioner having met obligations on his part by paying filing and docketing fees on December 16, 2003, pursuant to FRAP 4(a)(4)(B)(iii), *"[n]o additional fee is required to file an amended notice."*

CONCLUSION

The U.S. Supreme Court in its magnanimity demonstrated the policy it teaches that an appeal be determined on its merit by *sua sponte*, granted Petitioner 60 (sixty) days within which to correct and re-file his petition. This gesture demonstrates the intent to do justice to one and all, regardless of the litigant's status. Petitioner submits that the Eleventh Circuit Court is obligated to do no less. In fact, in recognition that *"[f]inality, not ripeness, is the doctrine governing appeals from district court to*

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[13] See generally United National Ins. Co. v. R&D Latex Corp., 242 F.3d 1102 (9th Cir. 2001); Miles v. MGC, 262 F.3d 720 (8th Cir. 2001); Johnson v. Bodine Electric Co., 2000 U.S. App. LEXIS 7262 (7th Cir. 2000); Brewer v. Nash, 2001 U.S. App. LEXIS 4151,*;5 Fed. Appx. 89 (2nd Cir. 2001); Futernick v. Sumpter Township, 207 F.3d 305 (6th Cir. 2000).

court of appeals," United States v. Jose, 519 U.S. 54 (136 L. Ed. 2d 364, 117 S. Ct. 463) (1996), and particularly as there was other ground upon which it could assume jurisdiction, declining to hear the appeal was clearly erroneous.

The approach of the Eleventh Circuit has been one of total impatience towards Petitioner, which is attributable principally to the fact that Petitioner is litigating instant action *pro se*. Petitioner who was called to the Nigerian bar in 1979 recognizes and would prefer representation by counsel even though 28 U.S.C. §1654 authorizes the conduct of one's own case personally.[14] However, when financial constrains and other prevailing circumstances[15] militate against the retention of counsel, the only recourse is to "do it yourself," because, without his credit to enable him establish a business of his own, Petitioner is doomed.[16]

There is no doubt that Equifax and Trans Union are very large and influential corporations. Yet, if might is right, then the United States President need not have humiliate himself by apologizing and offering compensation to detained Iraqis for the abuse suffered at the hands of a few irresponsible American troops. Having allowed their officers, employees, and agents violate the trust and abuse the authority conferred on consumer credit reporting agencies by the FCRA, they caused Petitioner grave injury; for which the United States Congress equally decreed Petitioner to be entitled to redress and compensation.

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[14] See also Art. 1, § 1, ¶ 12 of the Georgia Bill of Rights.

[15] Petitioner is 53. He suffers from ulcers, arthritis, diabetes, and high blood pressure. As such, he is not the prime candidate any employer looks forward to interviewing. Without adequate resources, Petitioner cannot not afford the $10,000.00 demanded as deposit by different counsel to undertake his case. The only recourse is the job force. Having tried and failed, severally, recourse is to setting up a business for one's self. However, in so far as credit reporting agencies distort one's credit history, the endeavor will equally fail.

[16] Trans Union forced Petitioner into court when it refused to reinvestigate and delete the inaccurate entry from Petitioner's credit file. Equifax has sustained Petitioner's resolve to continue this litigation by blocking access to Petitioner's credit file. So long as lenders rely on all three major national consumer reporting agencies to make their business decisions, Petitioner has no choice than fight for his economic survival.

When the District Court exonerated Equifax for acts similar to, and by far exceeding that of Trans Union, justice is not served. Yet Equifax persists in its efforts to destroy Petitioner by the continued blocking of Petitioner's consumer file so that Petitioner cannot guarantee a loan for his child to attend college. See for example the Sallie Mae Ed Trust letter of January 8, 2004.

Denying Petitioner subpoenas to obtain necessary evidence from less than cooperative lenders leaves Petitioner at the mercy of Trans Union which by August 2, 2004, already took undue advantage of the situation to file a frivolous motion for summary judgment, or in the alternative motion for sanctions. Equally, abridging discovery time otherwise entitled under the Federal Civil Procedure Rules, (without cause), is in denial of the right to fair hearing.

Petitioner comes before this Court, the last bastion of justice, to plead his cause because the judges of both the District Court and the Eleventh Circuit Court of Appeals have either intentionally, or inadvertently violated their solemn oath to *"administer justice without respect to persons, and do equal right to the poor and to the rich. . . ."* See 28 U.S.C. § 543.

Petitioner therefore prays the Supreme Court of the United States, to determine whichever of the remedies sought herein it deems appropriate: to either grant Certiorari and then upon briefing and argument, reverse the Eleventh Circuit Court of Appeals' orders declining jurisdiction, as well as dismissing Petitioner's amended notice of appeal; or more directly use its own original jurisdiction upon recognition of the jurisdictional principles set out hereof, to directly review the order of the District entered on November 19, 2003, dismissing Petitioner's valid claims, as well as denying Petitioner's motion for summary judgment, motion to further amend the complaint, motion for subpoenas to issue to compel third party disclosures, and *sua sponte* abridging entitled discovery time.

Respectfully submitted this 13th day of August, 2004.

Leopold O. V. Enwonwu
Pro Se
P.O. Box 567432
Atlanta GA 31156-7432
(678) 795-0840

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 03-16130-1

LEOPOLD O. V. ENWONWU,

Plaintiff-Appellant,

versus

TRANS UNION, LLC,
d.b.a. Trans Union Consumer Relations,

Defendant- Appellee

Appeal from the United States District Court for the
Northern District of Georgia

Before ANDERSON, BLACK and BARKETT, Circuit Judges.
BY THE COURT:

This appeal is DISMISSED, sua sponte, for lack of jurisdiction. The district court's November 18, 2003, order is not final and appealable because it did not dispose of all of the claims of all of the parties to this action. See 28 U.S.C. § 1291; Williams v . Bishop, 732 F.2d 885, 885-86 (11th Cir. 1984). Further, the district court did not certify the order for immediate review pursuant to Fed.R.Civ.P. 54(b). See In re Yam Processing Patent Validity Litigation, 680 F.2d 1338, 1340 (11th Cir. 1982).

No motion for reconsideration may be filed unless it complies with the timing and other and all other applicable rules.

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 03-16130-1

LEOPOLD O. V. ENWONWU,

Plaintiff-Appellant,

versus

TRANS UNION, LLC,
d.b.a. Trans Union Consumer Relations,

Defendant-Appellee

Appeal from the United States District Court for the
Northern District of Georgia

Before ANDERSON, BLACK and BARKETT, Circuit Judges.
BY THE COURT:

Leopold O. V. Enwonwu's February 9, 2004, motion for reconsideration of our January 20, 2004, order dismissing this appeal for lack of jurisdiction, is DENIED. To the extent that the November 18, 2003, order denied Enwonwu's request for injunctive relief, it is construed as an order denying a temporary restraining order, and thus, is not final or immediately appealable . See 28 U.S.C. §§ 1291, 1292(a)(1); McDougald v . Jenson, 786 F.2d 1465, 1472 (11th Cir. 1986); Fernandez-Roque v. Smith, 671 F.2d 426, 429 (1lth Cir. 1982). Additionally, because the district had not certified the November 18, 2003, order pursuant to Fed.R.Civ.P. 54(b) when Enwonwu filed his notice of appeal on December 1, 2003, we lack jurisdiction over this premature appeal.

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 04-10910-1

LEOPOLD O. V. ENWONWU,

Plaintiff-Appellant,

versus

TRANS UNION, LLC,
d.b.a. Trans Union Consumer Relations,

Defendant- Appellee

Appeal from the United States District Court for the
Northern District of Georgia

ENTRY OF DISMISSAL

Pursuant to the 11th Cir.R.42-1(b), this appeal is hereby dismissed for want of prosecution because the appellant has failed to pay the $250 docketing and $5 filing fees ($255) to the district court clerk within the time fixed by the rules, effective this 17th day of March, 2004.

Signed
THOMAS K. KAHN
Clerk of the United States Court
of Appeals for the Eleventh Circuit
By : Pamela Allen
Deputy Clerk
FOR THE COURT - BY DIRECTION

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

LEOPOLD O. V. ENWONWU,)
Plaintiff,)
v.) CA. No. 1:03-CV-0282
)
TRANS UNION, LLC, EQUIFAX)
INFORMATION SERVICES, LLC,)
WINING RIVER VILLAGE)
CONDOMINIUM ASSOCIATION,)
INC., ALAN ARMSTRONG, JOYCE)
WEEMS, and RICHARD M. HOWE,)
Defendants.)
)

ORDER

This pro se civil matter alleging various violations of the Fair Credit Reporting Act, 15 U.S.C. §§ 1681 et seq. and libel in violation of O.C.G.A. § 51-5-1 is currently before the Court on Plaintiff's motion for leave to further amend the complaint, Plaintiff's opposed motion for partial summary judgment, Defendants' opposed joint motion to stay discovery, Plaintiff's motion for clearance for subpoenas, Plaintiff's opposed motion to compel discovery and for sanctions, and Plaintiff's motion for issuance of subpoenas to compel third party disclosures.

I. Facts

In October 1996, Defendant Winding River Village Condominium Association, Inc. ("Winding River") brought suit in the State Court of Fulton County for unpaid condominium association fees in the amount of $6639 .47 plus interest allegedly owed by Plaintiff. The action was shortly thereafter dismissed for lack of subject- matter jurisdiction. Although the 1996 action was dismissed, Defendant Trans Union, LLC ("Trans Union") included a civil judgment of $6639 arising from the matter in Plaintiff's consumer credit report.

On February 20, 1997, Defendant Winding River filed substantially the same action in the Superior Court of Fulton County seeking association fees from Plaintiff. Following foreclosure and sale of the property giving rise to the association fees under dispute, the Superior Court of Fulton County, on February 27, 1998, entered a total judgment of $19,555 .30 against Plaintiff in favor of Defendant Winding River.[1]

In August 2000, Defendant Winding River, by and through its officers, Defendants Alan Armstrong and Joyce Weems, hired Defendant Richard Howe's law firm, Howe & Associates, P.C., to collect on its judgment against Plaintiff. On February 11, 2002, in an effort to collect said judgment, Defendant Howe filed a garnishment against Plaintiff in the State Court of Fulton County in the amount of $24,026.30. Defendant Howe dismissed the garnishment nine days later, but continued his efforts to collect the relevant judgment. At some point following the filing of said garnishment, Defendant Equifax Information Services, LLC ("Equifax") included notice of the filing in its consumer report on Plaintiff. Equifax, however, did not remove the garnishment from Plaintiff's credit report following dismissal of the garnishment. In a move that proves relevant to the current matter, Defendant Howe, on March 26, 2002, requested information relating to Plaintiff from Defendant Equifax.

In April 2001, June 2002 and October 2002, Plaintiff sought to purchase real property in three unrelated transactions. Plaintiff alleges that as a result of the aforementioned information contained in his Trans Union and Equifax consumer credit reports two of these transactions failed to close due to Plaintiff's inability to obtain satisfactory financing, and the other, although consummated, required him to accept an interest rate above that which would have otherwise been required.

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[1] Although Plaintiff contends judgment was not entered against him personally in the matter, the evidence before the Court, including a copy of the court judgment, indicates otherwise.

Following his failure to secure financing in October 2002, Plaintiff requested copies of his consumer credit reports from Defendants Trans Union and Equifax. After receiving and reviewing the reports, Plaintiff discovered the alleged inaccuracies and, on December 23, 2002, disputed Trans Union's listing of the 1996 civil judgment and Equifax's listing of the February 2002 garnishment filing.

In response to Plaintiff's December 23 dispute, Equifax reinvestigated the claim and removed the garnishment filing from Plaintiff's consumer report within 30 days of the dispute. Trans Union, after receiving Plaintiff's dispute, contacted the public records vendor that provided the disputed information to Trans Union for reinvestigation of the validity of the entry. Following reinvestigation, by letter dated January 10, 2003, Trans Union notified Plaintiff that the existence of the unsatisfied civil judgment against him had been verified and would remain in his credit file. Subsequently, however, Trans Union deleted the entry from Plaintiff's credit file on February 7, 2003.

Plaintiff filed the instant suit on January 31, 2003 alleging Defendants violated various provisions of the Fair Credit Reporting Act ("FCRA"), 15 U.S.C. §§ 1681 et seq. and O.C.G.A. § 51-5-1 which proscribes libel. Defendants, with the exception of Defendants Armstrong and Weems who answered jointly, answered the complaint individually, and Plaintiff, on March 11, 2003, promptly moved for partial summary judgment on the merits of his claims with a hearing on damages to be held later. Defendants responded, and each asserted that contrary to

Plaintiff's motion Defendant(s) were entitled to judgment as a matter of law.[2] Concurrent with the filing of Plaintiff's motion for summary judgment, Plaintiff filed a motion for leave to amend the complaint along with a proposed amended complaint. The Court granted Plaintiff's motion for leave to amend on April 16, 2003 and the clerk filed the amended complaint on that day. The following day, April 17, 2003, Plaintiff filed a second motion for leave to amend which is currently before the Court.

II. Plaintiff's Motion for Leave to Further Amend the Complaint

Plaintiff moves the Court for leave to amend the complaint for a second time pursuant to Fed.R.Civ.P. 15(a). Rule 15(a) instructs that after a responsive pleading has been filed a party may amend a pleading only by leave of court or written consent of the adverse party. Furthermore, leave of court is to be freely granted "when justice so requires." Fed.R.Civ.P. 15(a). "When justice so requires," however, is not an automatic right, Faser v. Sears, Roebuck & Co., 674 F .2d 856, 860 (11th Cir. 1982), and the futility of amendment provides reason for denying leave to amend. Foman v . Davis, 371 U.S. 178, 182 (1962).

Plaintiff's motion to further amend seeks to add five counts: (1) violation of 15 U.S.C. § 1681i(a)(6) by Trans Union; (2) violation of 15 U.S.C. § 1681g(a) (3) by Equifax; (3) libel in violation of O.C.G.A. § 51-5-1 by Defendants Winding River, Armstrong, Weems, and Howe; (4) retaliation by Trans Union; and (5) retaliation by Equifax. The evidence before the Court provides no basis for any of the three statutory claims, and Plaintiff identifies no common law or statutory basis to support a general claim of "retaliation." As such, granting Plaintiff leave to amend would be futile. Plaintiff's motion for leave to further amend the complaint is denied.

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[2] Although Defendants did not caption their responses to Plaintiff's motion for summary judgment as cross-motions for summary judgment, each response argued for judgment as a matter of law, and as such, the Court will treat the responses as crossmotions for summary judgment.

III. Plaintiff's Motion for Partial Summary Judgment

Plaintiff moves for partial summary judgment on the merits of all claims with a hearing on damages to be held later. Defendants each responded in opposition to Plaintiff's motion and prayed for judgment as a matter of law. As a result, the Court will analyze summary judgment separately for each Defendant and treat the issue as involving cross-motions for summary judgment. Summary judgment is appropriate only "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed.R.Civ.P. 56(c). To prevail on the motion for summary judgment, a defendant must show that the evidence is insufficient to establish an essential element of plaintiff's case. Celotex Corp. v . Catrett, 477 U.S. 317, 325 (1986) . In ruling on a motion for summary judgment, the Court must view the evidence in a light most favorable to the non-moving party. Adickes v . S .H . Kress & Co., 398 U.S. 144, 157 (1970). If the movant makes a sufficient showing, then the opposing party "must come forward with 'specific facts showing that there is a genuine issue for trial.'" Matsushita Electric Industrial Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986) (quoting Fed.R.Civ.P. 56(e)).

A. Trans Union

Plaintiff alleges Defendant Trans Union violated 15 U.S.C. §§ 1681(a), 1681(b), 1681k, 1681e(b), and 1681i(a)(1), and seeks damages for the claimed violations under 15 U.S.C. §§ 1681n and 1681o. Plaintiff further alleges Trans Union is guilty of libel in violation of O.C.G.A. § 51-5-1, and seeks an injunction to block continuing publication of the information under dispute. All of

Plaintiff's claims against Trans Union relate to Trans Union's publication of a 1996 civil judgment for $6639 entered against Plaintiff.

1. 15 U.S.C. S6 1681(a) and 1681(b)

Plaintiff asserts claims under 15 U.S.C. §§ 1681(a) and 1681(b) against Trans Union for its publication of the aforementioned civil judgment. 15 U.S.C. § 1681 is entitled "Congressional findings and statement of purpose," and although the section notes the need for reasonableness and accuracy in the actions of consumer reporting agencies, it does not set forth a standard of conduct the violation of which gives rise to civil liability. As such, Plaintiff's claims against Trans Union under § 1681 are dismissed.

2. 15 U.S.C. 6 1681k

Plaintiff asserts a claim against Trans Union under 15 U.S.C. § 1681k based on Trans Union's allegedly inaccurate publication of the 1996 civil judgment. Section 1681k is entitled "Public record information for employment purposes," and dictates certain requirements that help to ensure the accuracy of consumer reports issued for employment purposes. In the case at bar, Plaintiff offers no proof and, in fact, makes no allegation that Trans union issued a consumer report for employment purposes concerning Plaintiff. The consumer reports Plaintiff complains of concerned the issuance of credit in the mortgage context. Without even an allegation of Trans Union's issuance of a consumer report on Plaintiff for employment purposes, Plaintiff's § 1681k claim fails as a matter of law.

3. 15 U.S.C. 5 1681e(b)

Plaintiff further alleges that Trans union's inclusion of the 1996 civil judgment in Plaintiff's consumer report violated 15

U.S.C. § 1681e(b) which states, "Whenever a consumer reporting agency prepares a consumer report it shall follow reasonable procedures to assure maximum possible accuracy of the information concerning the individual about whom the report relates." In support of his § 1681e(b) claim, Plaintiff offers a copy of his Trans Union credit report which lists a civil judgment of $6639 entered in October 1996, docket # 96VS119262. Plaintiff also offers a copy of the court order in the above referenced civil action dismissing the claim against Plaintiff for lack of subject-matter jurisdiction.

To make out a prima facie violation of 15 U.S.C. § 1681e(b) Plaintiff must present evidence tending to show that Trans Union issued a consumer report containing "inaccurate" information. Cahlin v. General Motors Acceptance Corp., 936 F .2d 1151, 1156 (11th Cir. 1991). In the present matter, Plaintiff has produced sufficient evidence to make out a prima facie § 1681e(b) claim against Trans Union--the case referenced in the Trans Union consumer report was dismissed for lack of subject-matter jurisdiction, and therefore, reporting an entry of civil judgment in the matter was "inaccurate." Section 1681e(b), however, does not impose strict liability on credit reporting agencies for reporting inaccurate information, and an agency can escape liability therefrom if it can prove that such information was generated from following reasonable procedures. Id. Determining the reasonableness of procedures "will be a jury question in the overwhelming majority of cases." Id.

To defeat Plaintiff's § 1681e(b) claim, Trans union relies on persuasive authority holding that consumer reporting agencies may, as a matter of law, rely on information obtained from a court's judgment docket without violating the FCRA, absent prior notice from the consumer that the information is inaccurate. See Henson v . CSC Credit Servs., 29 F.3d 280, 285-86 (7th Cir. 1994). Even if the Court was persuaded by this authority, which seems at odds with reasonableness being a jury question in "the overwhelming majority of cases," Trans Union has provided nothing more than an affidavit which generally states that the company receives information from public record vendors relating to court judgment dockets. This evidence falls short of proof that a court docket reflected an unsatisfied civil judgment against Plaintiff in the amount of $6639.

Plaintiff has produced evidence sufficient to make out a prima facie violation of § 1681e(b) through proof that the civil action referenced in Trans Union's consumer report on Plaintiff was dismissed, thereby making the report inaccurate. Under precedent of the United States Court of Appeals for the Eleventh Circuit, Trans Union may escape liability by establishing that the report was in fact accurate or that the inaccuracy was the result of reasonable procedures. Cahlin, 936 F.2d at 1156. Furthermore, the determination of what constitutes reasonable procedures is a jury question in the vast majority of cases. Id. Trans Union claims that it obtained the information concerning Plaintiff from a court judgment docket. Whether the information was obtained from a court docket and, if so, whether such procedure is reasonable and therefore operates as a defense to Plaintiff's § 1681e(b) claim represent genuine issues of material fact. As such, summary adjudication of Plaintiff's § 1681e (b) claim against Trans Union is not appropriate.

4. 15 U .S .C . S 1681i(a)

Plaintiff contends that Trans Union's reinvestigation following Plaintiff's dispute of the inclusion of the 1996 civil judgment in his consumer report violated 15 U.S.C. § 1681i(a). § 1681i(a) governs reinvestigation of disputed information and dictates that certain procedures are followed by consumer reporting agencies during the reinvestigation process. Following Plaintiff's dispute of December 23, 2002, Trans Union contacted the public records vendor that provided Trans Union with the disputed judgment information for reinvestigation of the existence of the judgment. After receiving verification of the judgment from the vendor, Trans Union contacted Plaintiff by letter of January 10, 2003 informing Plaintiff that the disputed entry had been confirmed. Plaintiff does not point to, and the Court fails to locate, any portion of § 1681i(a) that Trans Union violated in its reinvestigation. Plaintiff's real issue is with the result of Trans Union's reinvestigation--verification of the disputed entry. The accuracy of Trans Union's consumer report on Plaintiff, however, is addressed through the § 1681e(b) claim, not § 1681i(a) which merely establishes reinvestigation procedure. As a result, Plaintiff's § 1681i(a) claim against Trans Union is dismissed.

5. O.C.G.A. § 51-5-1

Plaintiff claims Trans union committed libel in violation of O.C.G.A. § 51-5-1 through its publication of the 1996 civil judgment information regarding Plaintiff. The FRCA, however, contains 15 U.S.C. § 1681h(e) which preempts state defamation and other common law actions "except as to false information furnished with malice or willful intent to injure." Trans Union complied with the reinvestigation requirements of § 1681i(a) following Plaintiff's dispute of the civil judgment entry. After receiving notification from its public record vendor that the vendor had confirmed the accuracy of the entry, Trans Union notified Plaintiff of the result of reinvestigation within thirty days of Plaintiff's dispute. Although Plaintiff now questions the accuracy of the reinvestigation, Plaintiff offers no evidence of "malice or willful intent to injure" on the part of Trans union beyond his own unsupported allegations of a conspiracy against him. Therefore, Plaintiff's libel claims under O.C.G.A. $ 51-5-1 are dismissed based on preemption by the FRCA.[3]

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[3] Also dismissed is Plaintiff's claim for "continuing libel" based on Trans Union's alleged intention to maintain the civil judgment entry in Plaintiff's consumer report. The Court notes that beyond the issue of preemption this claim is moot based upon Trans Union's February 7, 2003 deletion of the entry from Plaintiff's file.

6. Injunctive Relief

Plaintiff prays for injunctive relief to prevent Trans Union from continuing to publish the 1996 civil judgment as part of Plaintiff's consumer report. Without reaching the issue of whether injunctive relief is available under the FRCA, Trans Union's February 7, 2003 deletion of the entry from Plaintiff's file renders the request for injunctive relief moot. Plaintiff's claim for injunctive relief against Trans Union is dismissed.

B. Equifax

Plaintiff alleges Defendant Equifax violated 15 U.S.C. §§ 1681(a), 1681(b), 1681k, 1681e(b), and seeks damages for the claimed violations under 15 U.S.C. §§ 1681n and 1681o. Plaintiff further alleges Equifax is guilty of libel in violation of O.C.G.A. § 51-5-1. All of Plaintiff's claims against Equifax relate to Equifax's publication of the February 2002 garnishment filed against Plaintiff in the State Court of Fulton County.

1. 15 U.S.C. §§ 1681(a) and 1681(b)

For the reasons set forth above with regard to Trans Union, the Court finds that 15 U.S.C. § 1681 does not set forth a standard of conduct the violation of which gives rise to civil liability. As a result, Plaintiff's claims against Equifax under 1681 are dismissed.

2. 15 U.S.C. § 1681k

Plaintiff asserts that Equifax violated several provisions of 15 U.S.C. § 1681k through its inclusion of the February 2002 garnishment filing in Plaintiff's consumer report following dismissal of said garnishment. Section 1681k, as noted in the Trans Union analysis above, applies to consumer reports issued for employment purposes. Plaintiff does not allege Equifax issued a consumer report for employment purposes. The consumer reports of which Plaintiff complains concern the issuance of credit in the mortgage context. Without an allegation that Equifax issued a consumer report on Plaintiff for employment purposes, Plaintiff's § 1681k claim fails as a matter of law.

3. 15 U.S.C. § 1681e(b)

Plaintiff next alleges that Equifax's inclusion of the February 2002 garnishment filing in his credit report following dismissal of said garnishment violated 15 U.S.C. § 1681e(b). § 1681e(b) requires that consumer reporting agencies follow reasonable procedures to provide maximum possible accuracy in their reports. Plaintiff admits that a garnishment was filed against him in February 2002. Thereafter, Equifax received notice of the garnishment from one of its public record vendors. Equifax did not receive notice that said garnishment had been voluntarily dismissed until Plaintiff contacted Equifax in December 2002. Plaintiff's complaint is that Equifax did not remove the garnishment entry from his consumer report in a prompt fashion. In order to make out a prima facie violation of § 1681e(b), Plaintiff must present evidence indicating Equifax issued a consumer report containing inaccurate information. Cahlin v. General Motors Acceptance Corp., 936 F.2d 1151, 1156 (11th Cir. 1991). Here, the information contained in Plaintiff's Equifax consumer report was accurate--a garnishment was filed against Plaintiff in February 2002. Moreover, Equifax's failure to affirmatively check, without notice, whether the information regarding the garnishment was stale does not constitute a violation of the FCRA . See Colletti v. Credit Bureau Servs., Inc., 644 F.2d 1148, 1151 (5th Cir. 1981).[4] Therefore, Plaintiff's §

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[4] This Court adopted as binding precedent all Fifth Circuit decisions prior to October 1, 1981. Bonner v. City of Prichard, 661 F.2d 1206, 1209 (11th Cir. 1981) (en banc).

1681e(b) claim against Equifax fails as a matter of law.

4. O.C.G.A. § 51-5-1

Plaintiff's final claim against Equifax alleges that Equifax violated § 51-5-1, which proscribes libel, through its publication of the 2002 garnishment filing in Plaintiff's consumer report. Plaintiff bears the burden of proving the falsity of an alleged libelous publication. Cox Enters., Inc. v. Thrasher, 442 S.E.2d 740, 742 (Ga. 1994). As noted above, the entry regarding the filing of the garnishment was not false, and as a result, cannot constitute libel. Furthermore, as with the libel claim against Trans Union, Plaintiff offers no proof of malicious or willful action on the part of Equifax to defeat preemption of his libel claim under 15 U.S.C. § 1681h(e). Plaintiff's O.C.G.A. § 51-5-1, libel claim against Equifax is dismissed.

C. Winding River, Alan Armstrong, Joyce Weems. And Richard M . Howe

Plaintiff alleges Defendants Winding River, Armstrong, Weems, and Howe violated 15 U.S.C. § 1681b by accessing Plaintiff's consumer report for an impermissible purpose. Section 1681b establishes the permissible purposes for issuing and obtaining consumer reports. Defendant Howe was hired by Defendant Winding River, through its officers, Defendants Armstrong and Weems, to collect a valid judgment entered against Plaintiff by the Superior Court of Fulton County on February 27, 1998. In pursuit of collecting said judgment, Defendant Howe accessed Plaintiff's Equifax consumer report on March 26, 2002. Plaintiff maintains that Defendant Howe's accessing of Plaintiff's consumer report was motivated by a conspiracy amongst Defendants against Plaintiff and constituted an impermissible purpose under § 1681b. Plaintiff further asserts that Defendants Winding River, Armstrong, and Weems are liable for the actions of their agent, Defendant Howe.

There is no law from the Eleventh Circuit addressing the issue of whether accessing a consumer report in pursuit of collecting a court judgment constitutes a permissible purpose under § 1681b. The Court is satisfied, however, that such a purpose is legitimate under § 1681b(a)(3)(A), which permits the issuance of a consumer report to a person who "intends to use the information in connection with a credit transaction involving the consumer on whom the information is to be furnished and involving the extension of credit to, or review or collection of an account of, the consumer." (emphasis added). This finding is in keeping with persuasive precedent identified by Defendants and the Court. See Korotki v. Attorney Servs. Corp., 931 F.Supp. 1269, 1277 (D .Maryland 1996) (finding law firm had permissible purpose under § 1681b(a)(3)(A) to access plaintiff's consumer report in an effort to collect account for client); Allen v. Kirkland & Ellis, NO. 91 C 8271, 1992 WL 206285, at *2 (N .D .Ill. Aug. 17, 1992) (finding law firm had permissible purpose under § 1681b(a)(3)(A) to access plaintiff's consumer report in preparation for litigation concerning unpaid account of plaintiff); Sather v. Weintraut, No. Civ. 01-1370(JNE/JGL), 2003 WL 21692111, at *3 (D .Minn. July 10, 2003) (accepting, in dicta, collection of court judgment as permissible purpose for attorney to access consumer report of debtor under § 681b(a)(3)(A)). The Court finds that Defendant Howe accessed Plaintiff's consumer report for the permissible purpose of attempting to collect a court judgment. As a result, pretermitting whether Defendants Winding River, Armstrong, and Weems could be held liable for Defendant Howe's actions, Plaintiff's claims under § 1681b against Winding River, Armstrong, Weems, and Howe are dismissed.

For the reasons set forth above, Plaintiff's motion for partial summary judgment is denied and all claims against Defendants are dismissed except for Plaintiff's 15 U.S.C. § 1681e(b) claim against Defendant Trans Union.

IV. Pending Discovery Motions

Also pending before the Court are several motions relating to discovery in the instant matter. Plaintiff filed the present suit on January 31, 2003, and promptly moved for summary judgment on March 11, 2003. Between March 28 and April 3, 2003, Defendants each responded in opposition to Plaintiff's motion for summary judgment and prayed for judgment as a matter of law for themselves. On April 3, Defendants jointly moved to stay discovery pending a ruling on the issue of summary judgment. Defendants' request for a stay of discovery was based on their belief that a ruling on summary judgment could dispose of some, if not all, of the claims in the matter, and a stay would therefore conserve the Court's and parties' resources without prejudice to anyone involved. The Court possesses broad discretion in deciding whether to stay discovery pending ruling on dispositive motions. Panola Land Buyers Ass In v. Shuman, 762 F.2d 1550, 1560 (11th Cir. 1985). In the present case, Plaintiff sought summary judgment soon after filing of the original complaint, and then proceeded to serve discovery requests upon Defendants. After service of Plaintiff's discovery requests, Defendants moved to stay discovery pending a ruling on summary judgment based on Defendants' belief that summary judgment could dispose of many of Plaintiff's claims. Under these circumstances, a stay of discovery pending a ruling on a dispositive motion is reasonable. As a result, Defendants' joint motion to stay discovery is granted nunc pro tunc.

Having granted Defendants' joint motion to stay discovery nunc pro tunc, Plaintiff's subsequent discovery motions to obtain clearance for subpoenas, to compel discovery and for sanctions, and for issuance of subpoenas to compel third party disclosures are denied.

Discovery shall proceed between the remaining parties to this action for a thirty-day period commencing from the date of entry of this order.

For the reasons set forth above, Plaintiff's motion for leave to further amend [#29] is DENIED, Plaintiff's motion for partial summary judgment [#10] is DENIED, all claims against Defendants are dismissed except for Plaintiff's 15 U.S.C. § 1681e(b) claim against Defendant Trans Union, Defendants' joint motion to stay discovery [#23] is GRANTED, Plaintiff's motion to obtain clearance for subpoenas [#34] is DENIED, Plaintiff's motion to compel discovery and for sanctions [#35] is DENIED, and Plaintiff's motion for issuance of subpoenas for third party disclosures [#36] is DENIED. Discovery shall proceed between the remaining parties to this action for a thirty-day period commencing from the date of entry of this order to close December 19, 2003. A consolidated pretrial order shall be filed no later than January 19, 2004.

SO ORDERED, this 18 day of November, 2003.

Signed
ORINDA D. EVANS
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

LEOPOLD O. V. ENWONWU,)
Plaintiff,)
v.) CA. No. 1:03-CV-0282
)
TRANS UNION, LLC, EQUIFAX)
INFORMATION SERVICES, LLC,)
WINING RIVER VILLAGE)
CONDOMINIUM ASSOCIATION,)
INC., ALAN ARMSTRONG, JOYCE)
WEEMS, and RICHARD M. HOWE,)
Defendants.)

ORDER

This civil matter is currently before the Court on Defendants Winding River Village Condominium Association, Inc., Alan Armstrong, and Joyce Weems's unopposed motion for entry of final judgment [146]. For the reasons set forth below, Defendants' motion is granted.

On November 19, 2003, this Court entered summary judgment on all claims in favor of all Defendants with the exception of one claim remaining against Defendant Trans Union, LLC . Defendants' present motion seeks entry of final judgment under Fed.R.Civ.P. 54(b) with respect to the claims originally asserted against them. Fed.R.Civ.P. 54(b) allows "the entry of final judgment as to one or more but fewer than all of the claims or parties only upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment."

In the present matter, the only remaining claim concerns the reasonableness of reporting procedures employed by Defendant Trans Union, LLC as determined by the Fair Credit Reporting Act, 15 U.S.C. § 1681e(b). This claim is unrelated to the merits of the dismissed claims, and there is no just reason for delaying entry of final judgment as to all claims dismissed by this Court's Order of November 19, 2003. Consequently, Defendants' motion for entry of final judgment is granted. Moreover, the Court, acting sua sponte, enters final judgment with regard to all other claims dismissed in the November 19 Order.

Accordingly, Defendants' motion for entry of final judgment [146] is GRANTED. The clerk is instructed to enter final judgment as to all claims dismissed by Order of this Court on November 19, 2003.

SO ORDERED, this _26_ day of January, 2004.

Signed
ORINDA D. EVANS
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

LEOPOLD O. V. ENWONWU,)
Plaintiff,)
v.) CA. No. 1:03-CV-0282
)
TRANS UNION, LLC, EQUIFAX)
INFORMATION SERVICES, LLC,)
WINING RIVER VILLAGE)
CONDOMINIUM ASSOCIATION,)
INC., ALAN ARMSTRONG, JOYCE)
WEEMS, and RICHARD M. HOWE,)
Defendants.)
)

JUDGMENT

This action having come before the court, Honorable Orinda D. Evans, United States District Judge, for consideration of defendants Winding River Village Condominium Association, Inc., Alan Armstrong, and Joyce Weems' motion for final judgment, and the court having granted said motion and having directed that judgment be entered pursuant to Rule 54(b), Federal Rules of Civil Procedure, it is Ordered and Adjudged that in accordance with the Court's Order of November 19,2003, all claims against defendants are DISMISSED with exception of plaintiff's 15 U.S.C. §1681(e)(b) claim against defendant Trans Union.

Dated at Atlanta, Georgia, this 26th day of January, 2004.

LUTHER D. THOMAS
CLERK OF COURT
Prepared, Filed, and Entered

in the Clerk's Office
January 27, 2004
By: Frances M. McNulty, Deputy Clerk J

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

LEOPOLD O. V. ENWONWU,)
Plaintiff,)
v.)
) CA. No. 1:03-CV-0282
)
TRANS UNION, LLC, EQUIFAX)
INFORMATION SERVICES, LLC,)
WINING RIVER VILLAGE)
CONDOMINIUM ASSOCIATION,)
INC., ALAN ARMSTRONG, JOYCE)
WEEMS, and RICHARD M. HOWE,)
Defendants.)
)

ORDER

This pro se civil matter is presently before the Court on Plaintiff's motion for leave to appeal and to stay further proceedings [#45) and Defendant's motion to compel (148] . For the reasons set forth below, Plaintiff's motion for leave and stay is denied, and Defendant's motion to compel is granted.

I. Background

The present matter was originally filed by Plaintiff on January 31, 2003, alleging various violations of the Fair Credit Reporting Act, 15 U.S.C. § 1681 et seq, and libel in violation of O.C.G.A. § 51-5-1. By Order of November 19, 2003, this Court granted summary judgment to all Defendants on all claims with the exception of Plaintiff's 15 U.S.C. § 1681e(b) claim against Defendant Trans Union. The November 19 Order also denied Plaintiff's motion to further amend the complaint as well as Plaintiff's motion for partial summary judgment. In addressing several discovery issues, the Court's Order also granted Defendants' joint motion to stay discovery nunc pro tunc, and as a result, denied Plaintiff's motion to obtain subpoenas, motion to compel discovery and for sanctions, and motion for issuance of subpoenas to compel third party disclosures. Furthermore, discovery was set to proceed between the remaining parties for a thirty-day period ending on December 19, 2003.

Following issuance of the Court's ruling on summary judgment, on December 1, 2003, Plaintiff filed a notice of appeal and the pending motion for leave to appeal and to stay further proceedings. On December 12, 2003, Defendant Trans Union filed the pending motion to compel responses to interrogatories, requests for production of documents and Plaintiff's attendance at deposition.

The United States Court of Appeals for the Eleventh Circuit, by Order of January 20, 2004, dismissed Plaintiff's appeal for lack of jurisdiction because this Court's ruling on summary judgment was not final and appealable, and had not been certified for immediate review. Reconsideration was subsequently denied by the Eleventh Circuit on March 16, 2004.

On January 26, 2004, this Court entered final judgment as to all claims dismissed by its November 19, 2003 Order. Plaintiff, on February 23, 2004, filed a second notice of appeal challenging both the November 19, 2003 Order and the January 26, 2004 entry of final judgment. The Eleventh Circuit dismissed Plaintiff's second appeal on March 18, 2004, for want of prosecution due to Plaintiff's failure to pay the required docketing and filing fees.

I. Plaintiff's Motion for Leave to Anneal and to Stay Further Proceedings

Plaintiff moves, pursuant to 28 U.S.C. § 1292(b), for certification of the rulings from the November 19, 2003 Order for immediate appeal, and further seeks a stay of proceedings pending appeal. In moving for such certification, Plaintiff seeks interlocutory review of the summary judgment rulings, discovery rulings, and denial of Plaintiff's motion to further amend the complaint. Based upon this Court's entry of final judgment under Fed.R.Civ.P. 54(b) on all claims dismissed by the November 19, 2003 Order, Plaintiff's motion for certification is moot to the extent it seeks certification of the rulings related to the dismissed claims. Those claims disposed of under Rule 54(b) have been finally adjudged, and as such, are appealable under 28 U.S.C. § 1291. See 28 U.S.C. § 1291 (granting jurisdiction to courts of appeals for appeals of all final decisions of district courts); see also Pitney Bowes, Inc . v . Mestre, 701 F .2d 1365, 1369 (11th Cir. 1983) ("Assuming that the Rule 54(b) certification was proper, the claim became appealable upon the entry of partial final judgment."). Accordingly, Plaintiff's motion is denied as moot to the extent it seeks certification of those claims upon which final judgment has been entered.

The only summary judgment ruling that could possibly be certified for interlocutory review is the denial of Plaintiff's partial motion for summary judgment on the surviving 15 U.S.C. § 1681e(b) claim against Defendant Trans Union. Certification under 28 U.S.C. § 1292(b), however, requires the presence of "a controlling question of law as to which there is substantial ground for difference of opinion." 28 U.S.C. § 1292(b). In contrast, Plaintiff's motion for partial summary judgment on the 15 U.S.C. § 1681e(b) claim against Trans Union was denied based on the presence of genuine issues of material fact. (November 19, 2003 Order at 9) (II[T]he determination of what constitutes reasonable procedures [under Section 1681e(b)] is a jury question in the vast majority of cases. As such, summary adjudication of Plaintiff's § 1681e(b) claim against Trans Union is not appropriate."). As such, the denial of partial summary judgment on the Section 1681e(b) claim is not certifiable for interlocutory review under 28 U.S.C. § 1292(b), and Plaintiff's motion is denied to the extent it seeks such certification.

Plaintiff's motion also seeks certification of the Court's November 19, 2003 discovery rulings and denial of Plaintiff's motion to further amend the complaint . A district court possesses broad discretion with regard to both controlling discovery and whether leave to amend should be granted after the time for amendment as a matter of right has passed . Phipps v . Blakeney, 8 F.3d 788, 790 (11th Cir . 1993) ("The district court has broad discretion to control discovery."); Haruett v . Valley Fed. Sav. Bank, 60 F.3d 754, 761 (11th Cir . 1995) ("Fed.R.Civ.P. 15(a) provides the district court with extensive discretion to decide whether to grant leave to amend after the time for amendment as a matter of course has passed.") (footnote omitted). Matters that are within the discretion of a district court are generally not appropriate for certification under 28 U.S.C. § 1292(b). Gunter v. Hutcheson, 497 F. Supp. 362, 369 (N.D.Ga. 1980). Accordingly, Plaintiff's motion to certify the discovery and leave to amend rulings is denied.

For the reasons set forth above, Plaintiff's motion for leave to appeal and to stay further proceedings is denied.

III. Defendant Trans Union's Motion to Compel

Defendant Trans Union seeks a motion to compel Plaintiff's responses to interrogatories and requests for production, and to compel his attendance at deposition following said responses. The facts relevant to Trans Union's motion to compel are as follows. On April 3, 2003, Trans Union filed a motion to stay discovery pending ruling on Plaintiff's motion for partial summary judgment. Subsequently, on August 7, 2003, Trans Union served Plaintiff with interrogatories and requests for production; Plaintiff objected to the requested discovery as untimely. This Court's November 19, 2003 Order granted Trans Union's motion for stay of discovery nunc pro tunc, and established a thirty-day discovery period to close on December 19, 2003.

On November 25, 2003, counsel for Trans Union sent Plaintiff a letter requesting responses to the August 7, 2003 discovery requests that had been filed during the stay. Counsel's letter also noticed Plaintiff's deposition for December 16, 2003. Plaintiff informed Trans Union's counsel that he would not respond to the discovery requests or appear at the deposition until the resolution of his notice of appeal and motion to stay.

28 U.S.C. § 1292(b) expressly provides that "application for an appeal hereunder shall not stay proceedings in the district court unless the district judge or the Court of Appeals or a judge thereof shall so order." Thus, Plaintiff's refusal to comply with discovery pending resolution of his motion for certification and stay was without merit. Trans Union's August 7, 2003 discovery requests were served during the stay of discovery, and on November 19, 2003, when the stay was lifted by order of the Court, the requests were ripe for response. Plaintiff failed to respond to the requests or attend the deposition noticed for December 16, 2003, without appropriate justification. As such, Trans Union's motion to compel is granted.

IV. Conclusion

For the reasons set forth above, Plaintiff's motion for leave to appeal and to stay further proceedings [#45J is DENIED and Defendant's motion to compel [#48J is GRANTED. Plaintiff is directed to respond to Trans Union's interrogatories and requests for production within twenty (20) days of entry of this Order. Furthermore, the parties are instructed to attempt to schedule a date for Plaintiff's deposition that is convenient for both parties, but in any event, the deposition is to take place within thirty (30) days of entry of this Order.

SO ORDERED, this 14TH day of June, 2004.

Signed
ORINDA D. EVANS
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

LEOPOLD O. V. ENWONWU,)
Plaintiff,)
v.) CA. No. 1:03-CV-0282
)
TRANS UNION, LLC, EQUIFAX)
INFORMATION SERVICES, LLC,)
WINING RIVER VILLAGE)
CONDOMINIUM ASSOCIATION,)
INC., ALAN ARMSTRONG, JOYCE)
WEEMS, and RICHARD M. HOWE,)
Defendants.)
)

AMENDED COMPLAINT FOR NEGLIGENT AND/OR MALICIOUS DAMAGE TO CREDIT AND LIBEL.

COMES NOW Leopold O. V. Enwonwu, (hereafter, "Plaintiff"), and make and file this his Amended Complaint showing the Court the following:

I.

JURISDICTION AND VENUE

1.

This action is brought pursuant to 15 U.S.C. §§ 1681 through 1681 p, as well as under the general Common law rules of defamation of character as codified in O.C .G .A. §51-5-1 et seq.

2.

Jurisdiction of the Court is invoked pursuant to 28 U.S.C.

§§1331, and 1332 for federal question and diversity matters, respectively; and specifically under 15 U.S.C. §§ 1681p for matters arising under the Fair Credit Reporting Act.

3.

Venue lies in this Court under 28 U .S .C 1391 (b) and (c) and this cause resides in the Atlanta Division of this Court under LR 3.1 (B) NDGa.

II

PARTIES

4.

Defendant, Trans Union LLC, d/b/a Trans Union Consumer Relations, (hereafter Trans Union), is a foreign limited liability company with its registered office at 555 W Adams Street, Chicago, IL 60661. Trans Union may be served through its registered agent: Prentice Hall Corporation Systems at 4845 Jimmy Carter Blvd, Norcross, Georgia 30093.

5.

Defendant, Equifax Information Services, LLC., (hereafter Equifax), is an entity incorporated in Georgia, and may be served through its Registered Agent : Kent E. Mast, at 1550 Peachtree Street, Atlanta, Georgia 30309; within jurisdiction.

6.

Defendant Winding River Village Condominium Association, Inc., (hereafter Winding River), is an entity incorporated in Georgia, which owns and/or operates the Winding River Village Condominium at Winding River Drive, Atlanta, Fulton County, Georgia 30350; and may be served through its Registered Agent: Heritage Place Management, at 8735

Dunwoody Place, Atlanta, GA 30350; within jurisdiction.

7.

At all times material to instant action, Alan Armstrong was Chief Executive Officer as well as a member the board of directors of Winding River; and Joyce Weems was the Chief Administrative Officer or Chief Financial Officer as well as a member the board of directors of the said Winding River.

8.

At all time material to instant action, Defendant Richard M. Howe, attorney-at-law, was legal adviser and counsel to the board of directors of the Winding River Village Condominium Association, Inc., and may be served at 4385 Kimball Bridge Road, Suite 100, Alpharetta, Georgia 30022 within jurisdiction.

III

GENERAL ALLEGATIONS

9.

In October 1996, Winding River commenced Civil Action File No. 96VS119262: Winding River Village Condominium Association, Inc, v . Leopold O. V. Enwonwu and Edith N. Enwonwu, in the State Court of Fulton County, claiming $6639 .47 as owed assessments levied against the property known and described as 360-L Winding River Drive, Atlanta, Georgia 30350.

10.

On January 30, 1997, Civil Action File No. 96VS119262: Winding River Village Condominium Association Inc, v. Leopold O. V. Enwonwu and Edith N. Enwonwu, was dismissed by Judge

Melvin K. Westmoreland as the State Court lacked Subject Matter Jurisdiction over condominium association matters.

11.

On February 20, 1997, the Association filed Civil Action No.: E-55868: Winding River Village Condominium Association, Inc., v. Leopold O. V. Enwonwu and Edith N. Enwonwu, in the Superior Court of Fulton County claiming $6807.47 as owed assessments levied against the said property known and described as 360-L Winding River Drive, Atlanta, Georgia 30350.

12.

Pursuant to a Deed Under Power dated February 3, 1998, Amsouth Bank foreclosed on the title of the property of the Enwonwus at 360-L Winding River Drive, Atlanta, Fulton County, Georgia 30350.

13.

Judgment in the Superior Court Civil Action No.: E-55868 was entered on the 26th Day of February, 1998, based on the fact that the Enwonwus were no longer owners of the property, and as such could not sustain their counterclaims against Winding River.

14.

On February 11, 2002, Richard Howe as counsel to Winding River, on the instructions of Defendants Alan Armstrong and Joyce Weems, filed a Continuing Garnishment Summons No. 02GC020638G: Winding River Village Condominium Association, Inc., v. Leopold O. V. Enwonwu, in the State Court of Fulton County; purporting to seek execution of the Superior Court judgment in Civil Action No.: E-55868.

15.

On February 20, counsel further filed pleading headed Plaintiffs Dismissal of Garnishment.

COUNT ONE

CLAIM AGAINST DEFENDANT TRANS UNION FOR WILLFUL AND DELIBERATE VIOLATION OF FCRA -1 5 U.S.C §§ 1681(a) and b), 1681e(b), 16811 (a), 1681k(a), 1681n and 1681o.

16.

Paragraphs 1 through 15 of this Complaint are hereby reiterated and incorporated by this reference as if specifically set forth herein.

17.

On or about October 1996, Defendants Trans Union willfully and negligently published or caused to be published as part of Plaintiff's consumer credit file to various business entities from which Plaintiff sought credit, or sought to extend credit to Plaint, and/or sought to engage in other business transactions with Plaintiff, the following words:

YOUR CREDIT INFORMATION

THE FOLLOWING ITEMS OBTAINED FROM PUBLIC RECORDS APPEAR ON YOUR REPORT. YOU MAY BE REQUIRED TO EXPLAIN PUBLIC RECORD ITEMS TO POTENTIAL CREDITORS. ANY BANKRUPTCY INFORMATION WILL REMAIN ON YOUR REPORT FOT 10 YEARS FROM THE DATE OF FILING. UNPAID TAX LIENS MAY GENERALLY BE REPORTED FOR AN INDEFINITE PERIOD OF TIME DEPENDING ON YOUR STATE OF RESIDENCE. PAID TAX LIENS MAY BE REPORTED FOR 7 YEARS FROM THE DATE OF PAYMENT. ALL OTHER PUBLIC RECORD INFORMATION, INCLUDING DISCHARGED CHAPTER 13 BANKRUPTCY AND ANY ACCOUNTS CONTAINING ADVERSE IMFORMATION REMAIN FOR 7

YEARS. ALL OTHER PUBLIC RECORD INFORMATION INCLUDING DISCHARGED CHAPTER 13 BANKRUPTCY, MAY BE REPORTED FOR 7 YEARS.
DOCKET #96VS119262 SUPERIOR COURT CIVIL JUDGMENT
PLAINTIFF: WINDING RIVER VILLAGE ENTERED: 10/1966
AMOUNT: $6639.

18.

Without taking reasonable and/or strict care to set up reasonable procedures to ensure the accuracy of information published in Plaintiffs consumer credit file, Trans Union published above false and untrue statement to the entities that accessed Plaintiffs consumer file and therein held out said information to have been obtained from public record; in violation of provisions of the Fair Credit Reporting Act, 15 U.S.C §§ 1681(a) and b), 1681e(b), 1681k(a), 1681n and 1681o.

COUNT TWO

CLAIM AGAINST DEFENDANT TRANS UNION FOR LIBEL IN VIOLATION OF O.C.G.A. § 51-5-1.

19.

Paragraphs 1 through 18 of this Complaint are hereby reiterated and incorporated by this reference as if specifically set forth herein.

20.

Persons/entities from whom/which Plaintiff sought credit, or sought to extend credit, and/or who/which sought to engage in other business transactions with Plaintiff understood above publication to mean that Plaintiff was wanting in character and morals, and would not only default in honoring his obligations, but was so unreliable that he would not enter into an arrangement to liquidate an unsatisfied personal judgment; as such, that engaging in any business transaction with Plaintiff was a deliberate risk.

21.

As a result of Trans Union's publication of said falsehood, Plaintiff has suffered rejection, disappointment, emotional harm, distress, injury to his character and reputation, loss of opportunities, and substantial financial loss, as his applications to such business entities for credit, were either denied or approved at a substantially higher interest rates; while entities seeking to extend credit to Plaintiff, and/or engage in other business transactions with his, since withdrew; resulting in substantial financial loss/injury.

COUNT THREE

CLAIM AGAINST DEFENDANT TRANS UNION FOR WILLFUL VIOLATION OF 15 U.S .C. §§ 16811 (a), 1681n, and 1681o.

22.

Paragraphs 1 through 21 of this Complaint are hereby reiterated and incorporated by this reference as if specifically set forth herein.

23.

Plaintiff on December 17, 2002, obtained a copy of his consumer file from Trans Union, and by telephone, disputed the erroneous publication.

24.

Trans Union, in violation of 15 U .S.C § 1681 i (a), on the face of a document described as a "Consumer Report for: Enwonwu, Leopold, O," dated January 10, 2003, confirmed intent to continue the perpetration and dissemination of the inaccurate consumer report defamatory of Plaintiffs character, in the following words:

"INVESTIGATION RESULTS

"WE HAVE COMPLETED OUR REINVESTIGATION AND THE RESULTS ARE SHOWN BELOW.

"ITEM	DESCRIPTION	RESULT
"AND FIN NET	#2002860228	NEW INFORMATION BELOW
"CIVIL JUDGMENT	DOCKET #96VS119262	VERIFIED, NO CHANGE."

YOUR CREDIT INFORMATION

THE FOLLOWING ITEMS OBTAINED FROM PUBLIC RECORDS APPEAR ON YOUR REPORT. YOU MAY BE REQUIRED TO EXPLAIN PUBLIC RECORD ITEMS TO POTENTIAL CREDITORS. ANY BANKRUPTCY INFORMATION WILL REMAIN ON YOUR REPORT FOT 10 YEARS FROM THE DATE OF FILING. UNPAID TAX LIENS MAY GENERALLY BE REPORTED FOR AN INDEFINITE PERIOD OF TIME DEPENDING ON YOUR STATE OF RESIDENCE. PAID TAX LIENS MAY BE REPORTED FOR 7 YEARS FROM THE DATE OF PAYMENT. ALL OTHER PUBLIC RECORD INFORMATION, INCLUDING DISCHARGED CHAPTER 13 BANKRUPTCY AND ANY ACCOUNTS CONTAINING ADVERSE IMFORMATION REMAIN FOR 7 YEARS. ALL OTHER PUBLIC RECORD INFORMATION INCLUDING DISCHARGED CHAPTER 13 BANKRUPTCY, MAY BE REPORTED FOR 7 YEARS.

DOCKET #96VS119262	SUPERIOR COURT	CIVIL JUDGMENT
PLAINTIFF:	WINDING RIVER VILLAGE	ENTERED: 10/1966
		AMOUNT: $6639

COUNT FOUR

CLAIM AGAINST DEFENDANT TRANS UNION FOR CONTINUED LIBEL IN VIOLATION OF O.C.G.A. § 51-5-1.

25.

Paragraphs 1 through 24 of this Complaint are hereby reiterated and incorporated by this reference as if specifically set forth herein.

26.

As a result of Trans Union's intent to continue the publication of above false statement to various business entities from which Plaintiff will seek credit and/or other business transactions, Plaintiff is exposed to apprehension and fear that all of his economic endeavors will continue to fail and as such, he will continue to suffer rejection, disappointment, emotional harm, distress, injury to his character and reputation, loss of opportunity, and substantial financial loss, as his applications to such business entities for credit and/or other business transactions will either be denied or approved at a substantially higher interest rates.

COUNT FIVE

CLAIM AGAINST DEFENDANT EQUIFAX FOR VIOLATION OF F CRA, 15 U.S.C §§ 1681(a) and (b), 1681e(b), 1681k(a), 1681n and 1681o.

27.

Paragraphs 1 through 26 of this Complaint are hereby reiterated and incorporated by this reference as if specifically set forth herein.

28.

In February 2002, Defendant, Equifax in violation of 15 U .S.C §§ 1681(a) and b), 1681 e(b), and 1681 k(a), published or caused to be published as part of Plaintiffs consumer file to various business entities from which Plaintiff sought credit, or sought to extend credit to Plaint, and/or sought to engage in other business transactions with Plaintiff, the following words:

Public Record Information

Garnishment Filed 02/02; Fulton County State Court; Case or Other ID Number - 2002GC020638 Defendant - Leopold Enwonwu, Amount $24026; Plaintiff – Winding River; Garnishee - Love and Ed Inc.

COUNT SIX

CLAIM AGAINST DEFENDANT EQUIFAX FOR LIBEL IN VIOLATION OF O.C.G .A. § 51-5-1.

29.

Paragraphs 1 through 28 of this Complaint are hereby reiterated and incorporated by this reference as if specifically set forth herein.

30.

Persons/entities from whom/which Plaintiff sought credit understood said publication to mean that engaging in business dealings with Plaintiff was a deliberate risk, as Plaintiff was so unreliable that he would not enter into an arrangement to liquidate an unsatisfied personal judgment in the sum of $24026, aforesaid.

31.

As a result of the publications by Equifax of above false statement to various business entities from which Plaintiff sought credit, or sought to extend credit to Plaintiff, and/or other business transactions, Plaintiff has suffered and continues to suffer rejection, disappointment, emotional harm, distress, and substantial financial loss and injury to his character and reputation, as his applications for credit were either denied or approved at a substantially higher interest rates; resulting in substantial financial loss/injury.

COUNT SEVEN

CLAIM AGAINST DEFENDANTS WINDING RIVER VILLAGE CONDOMINIUM ASSOCIATION, INC., AND RICHARD M. HOWE FOR VIOLATION OF FCRA, 15 U .S.C. §§ 1681b, 1681n, and 1681o.

32.

Paragraphs 1 through 31 of this Complaint are hereby reiterated and incorporated by this reference as if specifically set forth herein.

33.

On March 26, 2002, Richard M. Howe for and on behalf of Winding River, on the instructions of Defendants Alan Armstrong and Joyce Weems, either by himself, or through his associates/employees of the law firm of Howe & Associates P.C., willfully accessed Plaintiffs consumer credit file without his knowledge and/or consent, for the impermissible purpose of confirming that Equifax had published the garnishment summons No 02GC020638G, filed in the State Court of Fulton County on February 11, 2002, in violation of the Fair Credit Reporting Act 15 U.S.C. § 1681b(a).

34.

WHEREFORE, Plaintiff demand judgment against

Defendants jointly and severally, and prays that this Honorable Court for the following:

a) To grant an injunction restraining Defendant Trans Union, LLC., from the continued retention and/or publication of the wrongful and erroneous statement purportedly obtained from public record, described as the Judgment in Civil Action File No. 96VS119262 by the Superior Court in October 1996, in Plaintiff's consumer file and/or any other medium to any persons/entities, whom/whatsoever;
b) To grants Plaintiff compensatory damages;
c) To grants Plaintiff punitive damages;
d) To grants Plaintiff attorney fees and costs;
e) To grants Plaintiff jury trial on all issues;
f) To grants Plaintiff other such relief as the Court deems just and equitable.
g)

Respectfully submitted this 31st day of January, 2003.

Signed
LEOPOLD O. V. ENWONWU
[Pro Se].
Post Office Box 567432
Atlanta Georgia 31156-7432
(678) 795-0840

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

LEOPOLD O. V. ENWONWU,)
Plaintiff,)
v.) CA. No. 1:03-CV-0282
)
TRANS UNION, LLC, EQUIFAX)
INFORMATION SERVICES, LLC,)
WINING RIVER VILLAGE)
CONDOMINIUM ASSOCIATION,)
INC., ALAN ARMSTRONG, JOYCE)
WEEMS, and RICHARD M. HOWE,)
Defendants.)
)

ANSWER OF DE FENDANT, TRANS UNION LLC

Trans Union LLC ("Traps Union"). formerly known as Trans Union Corporation, by and through its undersigned attornevs, files the within Answer and avers as follows:

I. JURISDICTION AND VENUE

1. Trans Union does not contest jurisdiction.

2. Trans Union does not contest venue.

II PARTIES

3. Admits the allegations, except denies Traps Union is d/b/a Trans Union Consumer Relations. Trans Union Consumer Relations is the name of a department within Traps Union LLC.

4. No responsive pleading required for allegations

directed toward third parties.

5. No responsive pleading required for allegations directed toward third parties.

6. No responsive pleading required fur allegations directed toward third panics.

7. No responsive pleading required for allegations directed toward third parties.

8. No responsive pleading required for allegations directed toward third parties.

III. GENERAL ALLEGATIONS

9. Denies the allegations.

10. Denise the allegations.

COUNT ONE

11. Trans Union repeats and realleges each and every response to paragraphs 1-10 as if set forth at length herein.

12. Trans Union denies the allegations, except admits Plaintiff's Traps Union consumer credit file contained the information as quoted in paragraph 12 of the complaint.

13. Denies the allegations and denies Plaintiff's characterization of communications or documents which speak for themselves and further denies failing to follow reasonable procedures to assure maximum possible accuracy or otherwise reporting inaccurate information in violation of the Fair Credit Reporting Act . 15 U.S.C. § 1681 et seq. (the "FCRA") or other law.

14. Denies the allegations and further denies causing Plaintiff harm for which he is entitled to relief.

COUNT TWO

15. Trans Union repeats and realleges each and every response to paragraphs 1-14 as is set forth at length herein.

16. Denies the allegations and further denies knowledge or information sufficient to form a belief as to communications between Plaintiff and "his mortgage company." Trans Union admits solely Plaintiff contacted Trans Union on December 17, 2002 and requested a copy of his consumer file disclosure and that on December 23, 2002, Plaintiff submitted a dispute to Trans Union by telephone. On December 26, 2002, Plaintiff again telephoned Trans Union and represented he had a dismissal order relating to the disputed information. Plaintiff represented he would fax this documentation, but did not.

17. Denies the allegations, except admits solely Trans Union completed the reinvestigation referenced in paragraph 16 above on January 10, 2003 and provided Plaintiff the results of the reinvestigation as quoted in paragraph 17 of the complaint.[1]

18. Denies the allegations and denies Plaintiff's characterization of communications or documents which speak for themselves and further denies failing to follow reasonable procedures to assure maximum possible accuracy or otherwise reporting inaccurate information in violation of the FCR .4 or other law.

19. Denies the allegations and further denies causing

---

[1] The investigation results of the civil judgment stated "verified, no change," not "verified [sic], no change"

Plaintiff harm for which he is entitled to relief.

COUNT THREE:

20-25. No responsive pleading required for allegations directed toward third parties. To the extent such allegations are directed toward defendant Trans Union, Trans Union denies the allegations.

COUNT FOUR

26. Trans union repeats and realleges each and every response to paragraphs 1-25 as if set forth at length herein.

27. Denies the allegations.

28. WHEREFORE. Defendant Trans Union LLC demands judgment dismissing Plaintiff's complaint with prejudice, and awarding it such additional relief as die Court deems just and proper.

FIRST AFFIRMATIVE DEFENSE

The complaint fails to state a claim for which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

Defendant Trans Union has, at all material times with respect to plaintiff, acted in good faith and complied fully with the FCRA and relevant state laws.

THIRD AFFIRMATIVE DEFENSE

Based upon the averments upon which Plaintiff's claim is made, defendant Trans Union is immune from suit under the

FCRA.

FOURTH AFFIRMATIVE DEFENSE

Any harm suffered by Plaintiff was not caused by any act or omission of defendant Trans Union.

FIFTH AFFIRMATIVE DEFENSE

Any harm suffered by Plaintiff was caused by Plaintiff's own conduct or the conduct of third parties over which Trans Union has no control or authority.

SIXTH AFFIRMATIVE DEFENSE

With respect to Plaintiff, Trans Union's conduct and the alleged communications were entirely privileged and/or true.

SEVENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are burred by the doctrines of laches, unclean hands, waiver and estoppel.

EIGHTH AFFIRMATIVE DEFENSE

The claims contained in the complaint, which seek to recover punitive damages, violate the Fourth, Fifth, Sixth, Eighth and Fourteenth Amendments to the Constitution of the United Stales of America.

NINTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred by the applicable statutes of limitations

TENTH AFFIRMATIVE DEFENSE

Trans Union reserves the right to raise additional defenses it learns through the course of discovery.

WHEREFORE, Defendant Trans Union LLC demands judgment dismissing Plaintiff's complaint with prejudice, and awarding it such additional relief as the Court deems just and proper.

Respectfully Submitted

Signed
CHARLES M. MCDANIEL. JR.,
POST & McDANIEL, P.C .
Two Ravinia Drive . Suite 1570
Atlanta. GA 30346
(404) 870-8440; Fax: (404) 870-8445

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

LEOPOLD O. V. ENWONWU,)
Plaintiff,)
v.) CA. No. 1:03-CV-0282
)
TRANS UNION, LLC, EQUIFAX)
INFORMATION SERVICES, LLC,)
WINING RIVER VILLAGE)
CONDOMINIUM ASSOCIATION,)
INC., ALAN ARMSTRONG, JOYCE)
WEEMS, and RICHARD M. HOWE,)
Defendants.)
)

DECLARATION OF EILEEN LITTLE

Commonwealth of Pennsylvania)
County of Delaware) SS.
)

Eileen Little makes the following Declaration pursuant m 28 U.S.C. §1746:

1. I am Consumer Relations Group Manager at Trees Union LLC ("Trans Union"). I have been employed by Trans Union for over 25 years. I am authorized to make this affidavit on Trans Union's behalf. I am familiar with the content of Trans Union's file for the above consumer, Leopold Enwonwu.

2. Trans Union is a consumer reporting agency which maintains a data base of credit information, and public records such as lawsuits, judgments and bankruptcies respecting individuals throughout the United States.

3. Pursuant to the Fair Credit Reporting Act, 15 U.S.C. § 1681 et seq. (the "FCRA"), when a consumer requests a copy of his or her file, Trans Union provides a copy of that file in a form defined by the FCRA as a "consumer disclosure" Trans Union keeps records of requests for file disclosures in its computerized system.

4. When a consumer disputes information is his or her file under FCRA §1681i, Trans Union keeps records of disputes in its computerized system.

5. I reviewed Trans Union's files concerning Mr. Enwonwu and determined that Times Union received the first dispute from him on or about December 23, 2002. (He previously requested a copy of his report on December 17, 2002 through Trans Union's automated system.)

6. Pursuant to FCRA §1681g, Disclosures to Consumers, each time Trans Union furnishes a customer ("subscriber") a consumer report, an automated record of the inquiry is made and retained in the consumer's file (the inquiry field) for two (2) yeas. Trans Union's inquiry field for Mr. Enwonwu reflects that no consumer report was issued to a third party after plaintiff's December 23, 2002 dispute.

7. Trans Union also creates as automated record of each time a customer is furnished a copy of a consumer report "for employment purposes." (FCRA 1681g(a)(3)(I), These employment inquires are designated with the letters "EM." 1 have reviewed Mr. Enwonwu's consumer file and report and determined that Trans Union never furnished a report regarding Mr. Enwonwu to a third party.

8. Trans Union subscribers (Trans Union's customers) program their accounts receivable data using the “METRO” (and now METRO II) format, which is a single standard computes'

layout allowing creditors/subscribers to report consumer credit information that is acceptable to all credit reporting repositories and which meets all requirements of the Fan Credit Reporting Act, the Fair Credit Billing Act, and the Equal Credit Opportunity Act.

9. Public record vendors obtain court records and dockets from courts nationwide and furnish the information to Trans Union (and the other two national consumer reporting agencies) also using automated tapes.

10. Public record vendors and subscribers typically provide all of their accounts receivable data to Trans Union on a monthly or other basis by means of computer readable magnetic tapes. In addition, some information in provided via computer transmission when a creditor puts identifying information about an individual is the process of requesting a consumer credit report from Trans Union.

11. Before information from public record vendors or subscribers is entered into Trans Union's database, extensive testing is done to ensure that the reported information conforms to all of the necessary reporting standards.

12. Once on-line, monthly tapes are tested to ensure that the data is continuously reported correctly. If the information is found to be reported incorrectly, the data is pulled and re-verified with the creditor.

13. If a consumer disputes a public record to Trans Union, the public record vendor which famished Trans Union the information is required by contract with Trans Union to reinvestigate the dispute and confirm the accuracy of the report to Trans Union.

14. Mr. Enwonwu's dispute of the Winding River Village

judgment on December 23, 2002 was the first notice to Trans Union of an inaccuracy in Mr. Enwonwu's. Trans Union instructed its public records vendor to reinvestigate the carry based upon plaintiff's dispute.

15. As set forth is Exhibit "A," the vendor confirmed that the entry was vetted and "not satisfied."

16. Pursuant to PCRA §1681i, Trans Union notified Mr. Enwonwu of the verification.

17. On February 7.2003, Trans Union deleted the Winding River Village judgment from Plaintiffs file.

I declare under penalty of perjury that the foregoing is true and correct.

Signed
EILEEN LITTLE

DATED: April 1, 2003

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

LEOPOLD O. V. ENWONWU, Plaintiff, v. TRANS UNION, LLC, EQUIFAX INFORMATION SERVICES, LLC, WINING RIVER VILLAGE CONDOMINIUM ASSOCIATION, INC., ALAN ARMSTRONG, JOYCE WEEMS, and RICHARD M. HOWE, Defendants.	)	CA. No. 1:03-CV-0282

AFFIDAVIT OF ALICIA FLUELLEN

Personally appeared before me, the undersigned officer duly authorized to administer oaths, Alicia Fluellen, after being duly sworn, and stated as follows:

1. My name is Alicia Fluellen. I am over 21 years of age and I am competent to testify as to the matters stated herein. I am a Manager in the Office of Consumer Affairs for Equifax Information Services LLC and have authority to submit this affidavit on its behalf in support of its response in opposition for summary judgment.

2. I have personal knowledge of the facts set forth herein, except to the extent that I state herein another source for my knowledge.

3. Equifax is a consumer reporting agency within the meaning of the Fair Credit Reporting Act, 15 U.S .C. §§1681 et

seq. ("FCRA"). Equifax assembles and produces credit reports for use by its clients in evaluating the potential credit risk of consumers.

4. Equifax accepts information on a consumer's credit only from those sources of credit information, which includes banks, creditors and merchants, which, either on the basis of its prior experience, or because of the particular source's reputation, are determined by Equifax to be reasonably reliable sources of information.

5. In order to provide more prompt, current and complete records to its customers, Equifax operates an automated credit reporting system. A consumer's credit file is contained in a data bank stored in a computer system that is regularly updated via automated computer tapes or from information transmitted directly by credit grantors and other subscribers.

6. Throughout the period I have served as Manager of the Office of Consumer Affairs, I have been responsible for supervising the disclosure of the content of consumers' credit files to those consumers, and the handling of inquiries or disputes made by or on behalf of those consumers.

7. In the two years preceding the filing of this civil action, Equifax has not issued a consumer report for employment purposes on plaintiff Enwonwu.

8. To obtain public record information, Equifax contracts with a third-party record vendor who routinely visits courts to collect public record information and transmit it to Equifax for inclusion in its consumer credit reports. In this matter, Equifax's vendor obtained information regarding a garnishment that had been filed against Enwonwu in the State Court of Fulton County in February 2002. Equifax is unaware of exactly when it received this information.

9. Equifax did not received information from its vendor that the garnishment had been voluntarily dismissed.

10. On December 23, 2002, Equifax received a dispute from Enwonwu regarding the appearance of the garnishment on his file . Equifax conducted an investigation, and within 30 days of the dispute, removed the garnishment from Enwonwu's file and notified him of this action.

11. Prior to plaintiff's notice on December 23, 2002, Equifax had no knowledge of an inaccuracy on its file.

12. On March 26, 2002, Equifax received an inquiry from Howe & Associates regarding information pertaining to Enwonwu. Equifax does not keep record of what information, if any, was actually sent in response to this request; thus it does not know if any information was sent.

13. Equifax maintains a list of all entities that requested information on a particular consumer's credit file within two years period. That information is published to the consumer in a credit disclosure. Equifax does not keep record of what information, if any, was actually sent in response to these requests. From the codes listed, however, Equifax can determine if the request was an Equifax internal request, a promotional request (in which case only an address is provided to the requesting party), or some other type.

14. Equifax has not acted with malice or any intent to harm plaintiff in the handling of his credit file.

FURTHER AFFIANT SAYETH NOT.

Signed
Alicia Fluellen

SUBSCRIBED AND SWORN TO before me, the undersigned notary public, on March 26, 2003, to certify which witness my hand and official seal.

Signed
Notary Public, State of Georgia
NOTARY PUBLIC
COBB COUNTY, GA
My commission expires: 10/18/06

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

LEOPOLD O. V. ENWONWU,)
Plaintiff,)
v.) CA. No. 1:03-CV-0282
)
TRANS UNION, LLC, EQUIFAX)
INFORMATION SERVICES, LLC,)
WINING RIVER VILLAGE)
CONDOMINIUM ASSOCIATION,)
INC., ALAN ARMSTRONG, JOYCE)
WEEMS, and RICHARD M. HOWE,)
Defendants.)
)

AFFIDAVIT OF ALAN ARMSTRONG

State of Georgia)
)
County of Fulton)

Personally appeared before the undersigned officer duly authorized to administer oaths, Alan Armstrong, who, being duly sworn deposes and states as follows:

1. My name is Alan Armstrong. I am of the age of majority, am laboring under no disabilities, and am otherwise competent in all respects to give this Affidavit. This Affidavit is given from my personal knowledge of the facts stated herein and for use for all lawful purposes in the above-styled civil action.

2. At all times relevant hereto, I was a member of the Board of Directors for Winding River Village Condominium Association, Inc. ("Winding River"). Winding River is an

incorporated condominium association authorized to levy and collect assessments pursuant to its condominium declaration.

3. In October 1991, Leopold Enwonwu and Edith Enwonwu purchased a condominium unit at Winding River Village. Subsequent to October 1991, the Enwonwus incurred assessments for their share of common expenses which were not paid.

4. In or around October 1996, Winding River hired attorney Charles B. Waters, Jr. to file suit against the Enwonwus for unpaid assessments. Winding River ultimately obtained a judgment against the Enwonwus in the amount of $19,55530.

5. In or around August 2000, Winding River hired attorney Richard M. Howe and the law firm Howe & Associates to collect on its judgment against Mr. Enwonwu.

6. Winding River, through its Board of Directors, authorized Richard Howe and his law firm to pursue efforts to collect the judgment against the Enwonwus, and to retain a percentage of any collections obtained as attorney's fees for their legal services.

7. In so authorizing Richard Howe and his law firm to collect on the judgment, neither myself, Joyce Weems, nor any other member of the Board of Directors ever dictated the time, manner, or method of collection to be pursued against Mr. Enwonwu. Rather, we relied entirely on Richard Howe's and his law firm's professional expertise and discretion as attorneys.

8. At no time did myself, Joyce Weems, or any other member of the Board of Directors tell Mr. Howe or any other representatives of his law firm how the judgment against Mr. Enwonwu was to be collected. We did not instruct Mr. Howe or any other representatives of his law firm to obtain Mr. Enwonwu's

credit report, perform investigative activities, or take any other specific steps to locate Mr. Enwonwu and his assets. Rather, we left the time, manner and method of the collection of Winding River's judgment against Mr. Enwonwu entirely to the discretion and professional expertise of Mr. Howe and his law firm.

9. Winding River, through its Board, does not intend to waive or forgive any portion of its judgment or any other rights it may have against the Enwonwus and intends to continue its efforts to collect on the judgment against Mr. Enwonwu and any other persons who may be liable on the judgment. Mr. Howe and his law firm remain Winding River's attorneys for that purpose.

10. Neither myself, Joyce Weems, nor Winding River itself are subscribers to any credit reporting information collected by any credit reporting bureau or agency. Neither myself, Alan Armstrong, nor any other representative of Winding River provided Richard Howe or any other representative of his law firm with any forms, documents, or authority for the purpose of accessing Mr. Enwonwu's credit information. Neither myself, Alan Armstrong, nor any other representative of Winding River provided Equifax, Trans Union, or any other credit reporting bureau or agency with any forms, documents, or authority for the purpose of disclosing Mr. Enwonwu's credit information.

FURTHER AFFIANT SAYETH NOT.

Signed
ALAN ARMSTRONG

Sworn to and subscribed
before me this 2
day of April, 2003.

Signed
Notary Public
My commission expires:

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

LEOPOLD O. V. ENWONWU,)
Plaintiff,)
v.) CA. No. 1:03-CV-0282
)
TRANS UNION, LLC, EQUIFAX)
INFORMATION SERVICES, LLC,)
WINING RIVER VILLAGE)
CONDOMINIUM ASSOCIATION,)
INC., ALAN ARMSTRONG, JOYCE)
WEEMS, and RICHARD M. HOWE,)
Defendants.)
)

AFFIDAVIT OF JOYCE WEEMS

State of Georgia)
)
County of Fulton)

Personally appeared before the undersigned officer duly authorized to administer oaths, Joyce Weems, who, being duly sworn deposes and states as follows:

1. My name is Joyce Weems. I am of the age of majority, am laboring under no disabilities, and am otherwise competent in all respects to give this Affidavit. This Affidavit is given from my personal knowledge of the facts stated

2. At all times relevant hereto, I was a member of the Board of Directors for Winding River Village Condominium Association, Inc. ("Winding River"). Winding River is an incorporated condominium association authorized to levy and

collect assessments pursuant to its condominium declaration.

3. In October 1991, Leopold Enwonwu and Edith Enwonwu purchased a condominium unit at Winding River Village. Subsequent to October 1991, the Enwonwus incurred assessments for their share of common expenses which were not paid.

4. In or around October 1996, Winding River hired attorney Charles B. Waters, Jr. to file suit against the Enwonwus for unpaid assessments. Winding River ultimately obtained a judgment against the Enwonwus in the amount of $19,55530.

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6. Winding River, through its Board of Directors, authorized Richard Howe and his law firm to pursue efforts to collect the judgment against the Enwonwus, and to retain a percentage of any collections obtained as attorney's fees for their legal services.

7. In so authorizing Richard Howe and his law firm to collect on the judgment, neither myself, Alan Armstrong, nor any other member of the Board of Directors ever dictated the time, manner, or method of collection to be pursued against Mr. Enwonwu. Rather, we relied entirely on Richard Howe's and his law firm's professional expertise and discretion as attorneys.

8. At no time did myself, Alan Armstrong, or any other member of the Board of Directors tell Mr. Howe or any other representatives of his law firm how the judgment against Mr. Enwonwu was to be collected. We did not instruct Mr. Howe or any other representatives of his law firm to obtain Mr. Enwonwu's credit report, perform investigative activities, or take any other

specific steps to locate Mr. Enwonwu and his assets. Rather, we left the time, manner and method of the collection of Winding River's judgment against Mr. Enwonwu entirely to the discretion and professional expertise of Mr. Howe and his law firm.

9. Winding River, through its Board, does not intend to waive or forgive any portion of its judgment or any other rights it may have against the Enwonwus and intends to continue its efforts to collect on the judgment against Mr. Enwonwu and any other persons who may be liable on the judgment. Mr. Howe and his law firm remain Winding River's attorneys for that purpose.

10. Neither myself, Alan Armstrong, nor Winding River itself are subscribers to any credit reporting information collected by any credit reporting bureau or agency. Neither myself, Alan Armstrong, nor any other representative of Winding River provided Richard Howe or any other representative of his law firm with any forms, documents, or authority for the purpose of accessing Mr. Enwonwu's credit information. Neither myself, Alan Armstrong, nor any other representative of Winding River provided Equifax, Trans Union, or any other credit reporting bureau or agency with any forms, documents, or authority for the purpose of disclosing Mr. Enwonwu's credit information.

FURTHER AFFIANT SAYETH NOT.

Signed
JOYCE WEEMS

Sworn to and subscribed
before me this 2
day of April, 2003.

Signed
Notary Public
My commission expires:

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

LEOPOLD O. V. ENWONWU,)
Plaintiff,)
v.) CA. No. 1:03-CV-0282
)
TRANS UNION, LLC, EQUIFAX)
INFORMATION SERVICES, LLC,)
WINING RIVER VILLAGE)
CONDOMINIUM ASSOCIATION,)
INC., ALAN ARMSTRONG, JOYCE)
WEEMS, and RICHARD M. HOWE,)
Defendants.)
)

DEFENDANT RICHARD HOWE'S RESPONSE TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

COMES NOW, Defendant, Richard Howe, and hereby submits this its response to Plaintiff's Motion for Summary Judgment and shows as follows:

1. The Order and Judgment which is attached hereto as Exhibit A, refers to judgment taken against Plaintiff in the Superior Court of Fulton County, State of Georgia.

2. Said Judgment is still a matter of record, has not been modified, vacated or otherwise set aside. Attached herewith as "Exhibit B" is the Affidavit of Richard Howe.

3. Judgment was taken on winding River Village Condominium Association, Inc's. claim against Plaintiff for attorney's fees, assessments, condominium fees, and other related costs and expenses arising out of Plaintiff's ownership of a

Condominium in the Winding River Village claims asserted for condominium association fees were Exhibit A; Exhibit B; See also Plaintiff's Motion for Summary Judgment and Complaint.

4. Plaintiff complains that the judgment was reported on his credit report. See Plaintiff's Motion for Summary Judgment.

5. Plaintiff complains that Defendant Howe, pursued this debt by way of post judgment discovery, execution on the docket, fi fa, garnishment, and credit/ federex inquiry. See Plaintiff's Motion for Summary Judgment and Complaint.

ARGUMENT AND CITATION TO AUTHORITY

The Superior Court Judgment attached hereto as Exhibit "A" and hereinafter referred to as "Judgment", is, by Plaintiff's own admission, the same debt he now complains of in the instant matter. The civil action giving rise to the Judgment sought both equitable and monetary relief as against Leopold Enwonwu. However, during the course of litigation, the equitable claims were dropped as to Enwonwu and only a monetary claim was pursued. This monetary claim is now, after adjudication by the trial court, a "Judgment"

Plaintiff is under the legal misapprehension that the which said Judgment is pursued. Plaintiff asserts that limited to attachment, foreclosure and/or levy as against the real property at issue, only. However, Plaintiff is incorrect ; the claims for association fees can and were pursued against both the property and person of Plaintiff. Hence, our "Judgment" for monetary damages as against Enwonwu.

Plaintiff proceeding on the assumption that the Judgment can not be, or is improper, then goes on to complain about our post judgment collection efforts. However, if Plaintiff takes issue with the collection efforts, it must first attack the underlying judgment.

This, Plaintiff has not done. Further, until such time as Plaintiff disposes of the underlying judgment it is effectively precluded from complaining about our post judgment pursuit of this debt. In this regard, Defendant cites generally to the principles of collateral estoppel and res judicata. 28 USC § 1738; Stoll v. Gottlieb, 305 U.S. 165, 167, 170 (1938); Embry v . Palmer, 107 U.S. 3 (1882); Degnan, Federalized Res Judicata, 85 Yale L. J. 741, 742-750 (1976); Pantex Towing Corp . v . Glidewell, 763 F2d 1241 (11th Cir. 1985).

Though Plaintiff may no longer complain about the judgment itself, Plaintiff may complain about the manner in lack any factual basis and are pursued for purposes of Defendant Howe impermissibly accessed or attempted to access a consumer report on Plaintiff. Further it is alleged that Defendant Howe did so in violation of the Fair Credit Reporting Act ("FCRA"), 15 U.S.C. 1681 et seq.

Defendant Howe and his firm were retained to pursue the "Judgment" entered against Plaintiff . Exhibit B. All actions taken as against Plaintiff and credit reports sought or inquiries made by the firm of Howe & Associates, P.C. and/or Defendant Howe were related to collection on the Judgment and/or the subject matter of the judgment. Exhibit B. Accordingly, the actions of Defendant Howe, if any, do not give rise to liability under the "FCRA". See generally 931 Fed. Supp. 1269. See also 15 U.S.C. § 1681b.

Plaintiff has failed to show for what purpose Defendant obtained a credit report. Plaintiff has failed to show that Defendant obtained a credit report for something other than an legitimate business need. Plaintiff has failed to demonstrate or show that Defendant obtained or sought a credit report. Accordingly, Plaintiff's motion for summary judgment fails and should be denied as Plaintiff has failed to establish with admissible and proper evidence exactly what Defendant has done to violate the "FCRA". Further Plaintiff's factual assertions harassment and in bad faith. Defendant therefore seeks defense of this action.

Respectfully submitted this 3rd day of April 2003.

Signed
Marc Aragon Esq .
Howe & Associates
4385 Kimball Bridge, Suite 100
Alpharetta, GA 30022
Bar No: 021040
(678) 566 - 6800

EXHIBIT “A”

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

WINDING RIVIER VILLAGE)
CONDOMINIUM ASSOCIATION, INC .)
)
Plaintiff,)
v.) CIVIL ACTION
) FILE NO. E-55868
LEOPOLD O . V . ENWONWU and)
EDITH N . ENWONWU)
Defendants.)
)

ORDER AND JUDGMENT

The-above-styled action came on to be tried before the Court without a jury on December 17 and 18, 1997 and on February 19, 1998. Having considered the evidence in the case and the argument of the parties or their counsel, the Court hereby finds as follows:

On Plaintiff's Complaint the Court finds in favor of Plaintiff and awards Plaintiff Nine Thousand Eighty-Three and 47/100 Dollars ($9,083 .47) as principal, Four Hundred Dollars ($400 .00) as late fees, one Thousand Six Hundred Thirty-Nine and 15/100 Dollars ($1,639 .15) as interest, and Eight Thousand Four Hundred Thirty-Two and 68/100 Dollars ($8432 .68) as attorney's fees, for a total judgment in favor of Plaintiff and against Defendant in the amount of Nineteen Thousand Five Hundred Fifty-Five and 30/100 Dollars ($19,555 .30).

On Defendants' Counterclaim, the Court finds in favor of Plaintiff and orders that Defendants shall take nothing on their claim with regard to Defendants' vehicle that was towed. As to Defendants' carpeting, the Court awards Defendants Two

Thousand Three Hundred Twenty and 00/100 Dollars ($2,320.00) for the cost incurred to replace the carpeting.

The Court finds that Defendants are no longer the owners of the property located at 360-L Winding River Drive as a result of a foreclosure sale conducted on February 3, 1998 and the subsequent recording of a Deed Under Power of Sale on February 19, 1998. The Court hereby stays the remainder of Defendants' Counterclaims pending a resolution of the litigation in which Defendants have challenged the right, validity and/or conduct of the foreclosure sale. At such time as a Court of competent jurisdiction adjudicates that the foreclosure sale was proper and/or that the foreclosure sale should not be set aside, this Court, with respect to the above-styled action, shall enter judgment in favor of Plaintiff on the remainder of Defendants' Counterclaims.

IT IS SO ORDERED this 26th day of February, 1998.

Signed
Elizabeth E . Long, Judge
Superior Court of Fulton County
Atlanta Judicial Circuit

PREPARED AND PRESENTED BY:
Charles B. Waters, Jr.
Georgia Bar No.: 740040
WEISSMAN, NOWACK, CURRY & WILCO, P.C.
Two Midtown Plaza, 15th Floor
1349 West Peachtree Street
Atlanta, Georgia 30309
(404) 885-9215

EXHIBIT “B”

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

LEOPOLD O. V. ENWONWU,)
Plaintiff,)
v.) CA. No. 1:03-CV-0282
)
TRANS UNION, LLC, EQUIFAX)
INFORMATION SERVICES, LLC,)
WINING RIVER VILLAGE)
CONDOMINIUM ASSOCIATION,)
INC., ALAN ARMSTRONG, JOYCE)
WEEMS, and RICHARD M. HOWE,)
Defendants.)
)

STATE OF GEORGIA

COUNTY OF FULTON

Personally appearing before me, the undersigned officer duly authorized to administer oaths, is RICHARD M. HOWE, ESQ., who, after being duly sworn, deposes and says:

1.

My name is Richard M. Howe. I am over eighteen years of age and suffer from no legal disabilities. The facts contained in this affidavit are based upon my review of the case file and upon my personal knowledge and are the facts to which I would testify if I were called as a witness in Court. The statements in this affidavit are true and correct. Further the factual allegations and statements found within the attached Response to Motion for Summary Judgment are similarly true and correct.

2.

I am one of the above named Defendant's in the above-referenced action and the attorney who handled the post judgment collection efforts as relates to Plaintiff and the subject of Plaintiff's complaint.

3.

This Affidavit is made in support of Defendant's Response to Plaintiff's Motion for Summary Judgment.

4.

The attached Order & Judgment ("Judgment") which is also attached by Plaintiff in its filing of initial disclosures is a true and accurate copy of the Order and Judgment entered by the Superior Court of Fulton County on February 27, 1998.

5.

My law firm, Howe & Associates, P.C., was retained in its professional capacity as Attorneys at Law, to pursue the "Judgment". No other Defendant to this action directed or asked either the firm of Howe & Associates, P.C. or myself to obtain a credit report on Plaintiff.

6.

On March 26, 2002 and to date the "Judgment" was and still is in effect and my firm was and is attempting to collect on that "Judgment" as against Leopold Enwonwu.

7.

At no time did I, my office, or my employees ever obtain a consumer report from Equifax on Plaintiff absent a legitimate business need or for any purpose other than one associated with the pursuit of the collection of the "Judgment" and/or matters relating to collection of same and/or the subject matter of the "Judgment".

8.

The debt which is the subject matter of the attached Order and Judgment is for condominium fees, dues, assessments and the like.

9.

The attached order and Judgment has not been vacated or set aside or modified and is still in full force and effect.

This 3rd day of April, 2003.

FURTHER AFFIANT SAYETH NOT

Signed
RI HARD HO WE, ESQ. Affiant

Sworn to before me this
3rd day of April, 2003.

Signed
Notary Public
My commission expires Dec. 5, 2006

FOR THE ELEVENTH CIRCUIT

APPEAL CASE NO. 03-16130-1

LEOPOLD O. V. ENWONWU

Plaintiff/Appellant

v.

TRANS UNION, LLC., EQUIFAX INFORMATION SERVICES, LLC., WINDING RIVER VILLAGE CONDOMINIUM ASSOCIATION, INC., ALAN ARMSTRONG, JOYCE WEEMS AND RICHARD M. HOWE
Defendants/Appellees

APPEAL FROM THE ORDER OF THE HONORABLE ORINDA D. EVANS, JUDGE OF THE UNITED STATES DISTRICT COURT FOR NORTHERN GEORGIA, ENTERED ON NOVEMBER 20, 2003

MOTION FOR DIRECTION

LEOPOLD O. V. ENWONWU
Pro Se.
Post Office Box 567432
Atlanta Georgia 31156-7432
(678) 795-0840.

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENT CIRCUIT

LEOPOLD O. V. ENWONWU	)	
	)	
Plaintiff/Appellant,	)	
	)	**APPEAL NO:**
v.	)	
	)	**03-16130-1**
TRANS UNION, LLC., EQUIFAX	)	
INFORMATION SERVICES,	)	**U.S.D.C DKT NO:**
LLC.,WINDING RIVER	)	
VILLAGE CONDOMINIUM	)	**1:03-CV-0282-ODE**
ASSOCIATION, INC., ALAN	)	
ARMSTRONG, JOYCE WEEMS	)	
AND RICHARD M. HOWE,	)	
	)	
Defendants/Appellees.	)	
	)	

MOTION FOR DIRECTION

COMES NOW Leopold O. V. Enwonwu, (hereafter, "Plaintiff/Appellant"), and respectfully seeks the direction of the United States Court of Appeals for the Eleventh Circuit regarding the appropriate steps to take under the prevailing circumstances to perfect Plaintiff/Appellant's appeal from the Order of the Honorable Orinda D. Evans, United States District Judge, dated the 18th day of November, 2003, and entered in the United States District Court on November 20, 2003; (hereafter Order); and for such further or other Orders the Court of Appeals shall deem appropriate under the circumstance.

I. STATEMENT OF PROCEDURAL FACTS

On January 31, 2003, Plaintiff/Appellant filed Civil

Action No. 1:03-CV-0282-ODE in the U.S. District Court for the Northern District of Georgia for Appellees' various violations of provisions of the Fair Credit Reporting Act (FCRA), 15 U.S.C. §§ 1681 et seq. and O.C.G.A. § 51-5-1 for libel. By an Order entered by the Honorable Orinda, District Court Judge, on November 20, 2003, the District court held that Defendants/Appellees were deemed by their responses to the Motion for Partial Summary Judgment to have moved for judgment as a matter of law, and that said responses would be treated as cross-motions for summary judgment. Apart from denying Appellant's Motion for Partial Summary Judgment, Judge Orinda D. Evans granted Appellees' said cross-motion for summary judgment, and dismissed all of Appellant's claims save for the 15 U.S.C. § 1681e(b) claim against Trans Union, LLC; and consequentially denied Appellant's Motion to Further Amend the Complaint, Motion to Compel Discovery, as well as the Motion for Issuance of Subpoenas to Compel Third Party Disclosures. Thereafter, Judge Evans ordered that discovery proceeds between the remaining parties to the action for 30 (thirty) days commencing from the date of entry of the order, with a consolidated pretrial order to be filed no later than January 19, 2004.

To protect his right of appeal, Plaintiff/Appellant on December 1, 2003, filed a Notice of Appeal in the District Court, and simultaneously filed a motion for leave to appeal and stay of proceedings pending appeal. By a letter dated December 4, 2003, the Clerk of the Court of Appeals directed Plaintiff/Appellant to pay cost of filing appeal to the Clerk of the U.S. District Court and order record of appeal failing which the appeal will be dismissed. Plaintiff/Appellant on December 16, 2003, complied. Plaintiff/Appellant was also notified that his appeal brief should be filed within forty (40) days after the issuance of the certificate of readiness of record on appeal.

Upon crosschecking the Federal Civil Procedure Rules, Plaintiff/Appellant discovered that it does not contain any appellate provisions. To err on the side of caution, Plaintiff/Appellant on December 22, filed in the Eleventh Circuit Court of Appeals a petition for permission to appeal. By a letter dated December 23, 2003, the Clerk of the Appeals Court retuned the Petition as unfilled, for the following reason:

> (X) F.R.A.P. 5(b)(1)(E)(ii) requires that the petition contain a copy of the district court order stating that the district court's permission to appeal or finding that the necessary conditions are met.

By a letter dated January 5, 2004, the Clerk of the District Court informed Plaintiff/Appellant that the record of appeal was ready.

Plaintiff/Appellant is currently faced with the dilemma as to which court currently has jurisdiction of the case; to wit:

Whether the District Court retains jurisdiction until a ruling is entered on the motion for leave to appeal, in which case Plaintiff/Appellant has no immediate need to file an appeal brief; or, whether the Court of Appeals upon issuing an appeal number now has jurisdiction of the case, in which case:

(i) Whether Plaintiff/Appellant must now resubmit a petition for permission to appeal, or

(ii) Proceed to prepare and file his brief within forty (40) days.

Plaintiff/Appellant remains of the opinion that the District Court's interlocutory order entered on November 20, 2003, **(R-3-43)**, is a "collateral order" an appeal from which the Court of Appeals has jurisdiction. See Behrens v. Pelletier; 516 U.S. 299 (1996) citing Cohen v. Beneficial Industrial Loan Corporation, 337 U.S. 541, 545-547 (1949);[2] for the following reasons:

i) It dismisses with finality all but one of Plaintiff/ Appellant's claims against six defendants, leaving only the § 1681e(b) claim against Trans Union;

ii) It denies with finality Plaintiff/Appellant's rights to bring additional charges against Defendants/Appellees for admitted violations of the FCRA;

iii) It denies with finality Plaintiff/Appellant's right to issue subpoenas to compel third party disclosures; and,

iv) It reduced with finality Plaintiff/Appellant's otherwise entitlement discovery time of about three (3) months to only one month.

But for the § 1681e(b) claim against Trans Union, the District Court's order granting Defendants/Appellees' motion for judgment as a matter of law converted to a cross-motion for summary judgment is otherwise a "final" judgment as it ended "the litigation [against five of the Defendants/Appellees] on the merits and leaves nothing for the court to do but execute the judgment." See Catlin v. United States, 324 U.S. 229, 233, 65 S.Ct. 631, 635 (1945). This is especially so as since the District Court relied on the authority of Foman v. Davis, 371 U.S. 178, 182 (1962); to deny Appellant's motion to further amend the complaint, and thereafter denied of all other pending applications as moot; in clear evidence that granting the cross-motion for summary judgment ended the case against all of the Defendants/Appellees save for the § 1681e(b) claim against Trans Union. See National Distrib. Agency v. Nationwide Mut. Ins. Co.,

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[2] See also Johnson v. Jones, 515 U.S.---(1995); Midland Asphalt Corp. United States, 489 U.S. 794, 799 (1989); Gulfstream Aerospace Corp. v. Mayacomas Corp., 485 U.S. 271, 276 (1988).

177 Fed. 3d 1347, 1350 (9th Cir. 1994); where it was held that in dismissing the claims without leave to amend, the District Court "intended to make the order final." See Scott v. Eversole Mortuary, 522 Fed. 2d 1110, 1112 (9th Cir. 1975); Gerritsen v. De La Madrid Hurtado, 819 Fed. 2d 1511, 1514 (9th Cir. 1987).

To the intent of protecting his right of appeal, Plaintiff/Appellant respectfully prays the Court of Appeals for guidance and direction as to the appropriate steps under the circumstance; and for any such additional orders as the Court deems appropriate under the circumstance.

Respectfully submitted this 7th day of January, 2004.

LEOPOLD O. V. ENWONWU
[Pro Se].

Post Office Box 567432
Atlanta Georgia 31156
(678) 790-0840.

IN THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

APPEAL CASE NO. 03-16130-1

LEOPOLD O. V. ENWONWU

Plaintiff/Appellant

v.

TRANS UNION, LLC., EQUIFAX INFORMATION SERVICES, LLC., WINDING RIVER VILLAGE CONDOMINIUM ASSOCIATION, INC., ALAN ARMSTRONG, JOYCE WEEMS AND RICHARD M. HOWE

Defendants/Appellees

APPEAL FROM THE ORDER OF THE HONORABLE ORINDA D. EVANS, JUDGE OF THE UNITED STATES DISTRICT COURT FOR NORTHERN GEORGIA, ENTERED ON NOVEMBER 20, 2003

APPELLANT'S MOTION FOR RECONSIDERATION OF THE ORDER OF DISMISSAL OF APPEAL

LEOPOLD O. V. ENWONWU
Pro Se.
Post Office Box 567432
Atlanta Georgia 31156-7432
(678) 795-0840.
February 06, 2004

COMES NOW Leopold O. V. Enwonwu, (hereafter Appellant) and moves the Eleventh Circuit Court of Appeals for review of its Order entered *sua sponte*, on the 20th day of January, 2004, dismissing instant appeal for want of jurisdiction, and shows the Court of Appeals as follows:

2. STATEMENT OF THE CASE

Civil Action No. 1:03-CV-0282-ODE was filed in the United States District Court below, on January 31, 2003, **[R-1-1]**, to redress the deliberate wrongful acts of Appellees in violation of Appellant's privacy rights protected by provisions of the Fair Credit Reporting Act (hereafter FCRA) 15 U.S.C. § 1681 *et seq.*, and for libel as prohibited by O.C.G.A. § 51-5-1 *et seq.* Included in the prayers sought in the Amended Complaint was injunctive relief. **[R-2-27]**. By an order entered on November 20, 2003, **[R-3-43]**, Judge Orinda D. Evans granted Appellees' cross-motions for summary judgment save for the 15 U.S.C. § 1681e(b) claim against Trans Union, as well as their joint motion to stay of discovery. The District Court equally denied Appellant's motion for summary judgment including Appellant's prayer for injunctive relief, motion for leave to further amend the complaint, motion to compel and for sanctions, and motion for subpoenas to issue to compel third party disclosures. Thereafter, the Order abridged time Appellant was otherwise entitled to conduct discovery, but for Appellees' said joint motion for stay of discovery.

On December 1, 2003, Appellant filed his notice of appeal. **[R-3- 44]**. Appellant on the same date also filed a motion for leave to appeal, and for stay of further proceedings, **[R-3-45]**, in the District Court. On December 4, 2003, Appellees, Winding River Village Condominium Association, Inc., Alan Armstrong, and Joyce Weems filed a joint motion for entry of final judgment; **[R-3-46]**; while Trans Union filed a motion to compel discovery on December 12, 2003. **[R-3-48]**. Appellant responded to the motion to compel discovery on December 18, 2003. **[R-3-50]**.

Instant appeal was entered upon the payment of appeal fees on December 16, 2003. Appellant since received notice dated January 5, 2004, that the record on appeal is now ready. By the Order entered on January 20, 2004, the Court of Appeals for the Eleventh Circuit *sua sponte* dismissed the appeal. The District Court upon granting the joint motion of Appellees, Winding River Village Condominium Association, Inc., Alan Armstrong, and Joyce Weems on January 26, 2004, has since entered a final Order dismissing all of Appellant's claims but for the 15 U.S.C. § 1681(e)(b) claim against Trans Union. **[Exhibit A]**. Appellant by instant motion seeks review of the Order dismissing his appeal, as said Order of Dismissal issued in error.

3. STATEMENT OF THE FACTS

For purposes of instant application only, Appellant adopts the facts as set forth in the District Court Order entered on November 19, 2003. **[R-3-43]**.

4. ARGUMENT AND CITATION OF AUTHORITIES

The Eleventh Circuit Court of Appeals Had And Continues To Have Jurisdiction Of Instant Appeal

28 U.S.C. § 1292(a)(1) provides that the Courts of Appeals shall have jurisdiction of appeals from an *"interlocutory orders of the district courts of the United States. . .or of the judges thereof, granting, continuing, modifying, refusing or dissolving injunctions, or refusing to dissolve or modify injunctions . . . ."* Carson v. American Brands, Inc., 450 U.S. 79; 101 S. Ct. 993;67 L. Ed. 2d 59, (1981) Stringfellow v. Concerned Neighbors, 480 U.S. 370; 107 S. Ct. 1177;94 L. Ed. 2d 389 (1987); Gulfstream Aerospace Corp. v. Mayacamas Corp., 485 U.S. 271; 108 S. Ct.

1133;99 L. Ed. 2d 296, (1988). At page 11 of the interlocutory Order entered on November 19, 2003, **[R-3-43]**, the District Court denied Appellant's prayer for an injunction. As such, the Eleventh Circuit Court of Appeals had and continues to have jurisdiction to review that interlocutory Order.

Furthermore, the District Court on January 26, 2004, since entered a final Order and judgment in terms of the said Order entered on November 19, 2003. **[Exhibit A]**. Pursuant to FRAP 4(a)(2), Appellant's notice of appeal filed after the District Court entered the Order of November 19, 2003, subsists as the notice of appeal is treated as filed on the date of and after the entry of the final order and judgment. RTC v. Keating, 186 F.3d 1110; (9th Cir. 1999).

CONCLUSION

Based on the foregoing argument and citation of authorities, Appellant submits that his motion for reconsideration is meritorious as his appeal was, *ab initio*, properly before the Court of Appeals for the Eleventh Circuit, and as such should be reinstated to be decided on its merit.

Respectfully submitted this 9th day of February, 2004.

LEOPOLD O. V. ENWONWU
[Pro Se].

Post Office Box 567432
Atlanta Georgia 31156
(678) 790-0840.

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(888)-272-5543

LEOPOLD ENWONWU
1950 BRANCH VALLEY DRIVE
ROSWELL GA 30076-

Dear LEOPOLD ENWONWU

01/08/04

RE: Loan Program: PLUSLOAN

We received your application for a student loan as referenced above. We are unable to process your application until you assist with the following:

- Sign the promissory note section.
- Provide your lender preference.
- Provide your requested loan amount. If amount was listed but has been altered, please verify it and initial the change.
- Provide name change document
- Provide additional reference information.
- Provide verification of your Social Security Number.
- Provide your Driver's License Number and State of issue.
- The borrower and/or reference section of the application is incomplete. Please complete all the areas in this section.
- The school section of the application is incomplete. Please have your financial Aid Officer complete the areas in this section. Only the Financial Aid Officer may make changes in this section.
- Your requested loan types are not compartible with the school approved loan types. Please see your Financial Aid Officer for assistance.

- Provide documentation that you have made satisfactory arrangements with the holder of your default loan.
- Unable to verify identity.

X Other: WE ARE UNABLE TO PROCEED WITH YOUR REQUEST FOR THE PLUS LOAN DUE TO A BLOCK ON YOUR EQUIFAX CREDIT REPORT. TO PROCESS WE WILL NEED YOU TO CONTACT EQUIFAX TO RELEASE THIS BLOCK.

If your application is enclosed, please make the required corrections, initial any changes, and return your application to us. Please do not use correction fluid. If your application is not enclosed, please contact us at (888) 272-5543 with the required information.

If we receive the needed information from you within 30 days for FFELP loans or 90 days for privately-insured loans, we will continue processing your application. Thank you for your cooperation.

TABLE OF STATUTORY AUTHORITIES

U.S. CONSTITUTIONAL PROVISIONS

Article 3 § 2 – Jurisdiction.

The judicial Power shall extend to all Cases, in Law and Equity, arising under the Constitution, the Laws of the United States and Treaties made, or which shall be made, under their Authority; – to all Cases affecting Ambassadors, other public Ministers and Counsels; – to all Cases of admiralty and maritime Jurisdiction; – to Controversies to which the United State shall be a party; – to Controversies between two or more States; – between a State and Citizens of another State; –between Citizens of different States; –between Citizens of the same State claiming land under Grants of different States and between a State or the Citizens thereof, and foreign States, Citizens or Subjects.

In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the Supreme Court shall have original Jurisdiction. In all other Cases before mentioned, the Supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

4th Amendment – Security from Unwarranted Search and Seizure

The right of the people to be secure in their persons, houses, papers and effects, against unreasonable search and seizure, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the person or thing to be seized.

5th Amendment – Right of Accused In Criminal Proceedings

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

14th Amendment § 1 – Equal Protection of the Law

All persons born or naturalized in the United States and subject to the jurisdiction thereof are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

FEDERAL STATUTES

15 U.S.C. § 1681a. - Definitions; rules of construction

(p) Consumer Reporting Agency That Compiles and Maintains Files on Consumers on a Nationwide Basis. –

The term "consumer reporting agency that compiles and maintains files on consumers on a nationwide basis" means a consumer reporting agency that regularly engages in the practice of assembling or evaluating, and maintaining, for the purpose of furnishing consumer reports to third parties bearing on a consumer's credit worthiness, (FOOTNOTE 3) credit standing, or credit capacity, each of the following regarding consumers residing nationwide: "creditworthiness,".

(1) Public record information.

(2) Credit account information from persons who furnish that

information regularly and in the ordinary course of business.

15 U.S.C. § 1681b. - Permissible purposes of consumer reports

(a) In general

Subject to subsection (c) of this section, any consumer reporting agency may furnish a consumer report under the following circumstances and no other:

(1) In response to the order of a court having jurisdiction to issue such an order, or a subpoena issued in connection with proceedings before a Federal grand jury.

(2) In accordance with the written instructions of the consumer to whom it relates.

(3) To a person which it has reason to believe -

(A) intends to use the information in connection with a credit transaction involving the consumer on whom the information is to be furnished and involving the extension of credit to, or review or collection of an account of, the consumer; or

(B) intends to use the information for employment purposes; or

(C) intends to use the information in connection with the underwriting of insurance involving the consumer; or

(D) intends to use the information in connection with a determination of the consumer's eligibility for a license or other benefit granted by a governmental instrumentality required by law to consider an applicant's financial responsibility or status; or

(E) intends to use the information, as a potential investor or servicer, or current insurer, in connection with a valuation of, or an assessment of the credit or prepayment risks associated with, an existing credit obligation; or

(F) otherwise has a legitimate business need for the information -

(i) in connection with a business transaction that is initiated by the consumer; or

(ii) to review an account to determine whether the consumer continues to meet the terms of the account.

15 U.S.C. § 1681c. - Requirements relating to information contained in consumer reports

(a) Information excluded from consumer reports
Except as authorized under subsection (b) of this section, no consumer reporting agency may make any consumer report containing any of the following items of information:
(1) cases under title 11 or under the Bankruptcy Act that, from the date of entry of the order for relief or the date of adjudication, as the case may be, antedate the report by more than 10 years.
(2) Civil suits, civil judgments, and records of arrest that, from date of entry, antedate the report by more than seven years or until the governing statute of limitations has expired, whichever is the longer period.
(3) Paid tax liens which, from date of payment, antedate the report by more than seven years.
(4) Accounts placed for collection or charged to profit and loss which antedate the report by more than seven years.
(5) Any other adverse item of information, other than records of convictions of crimes which antedates the report by more than seven years.
(b) Exempted cases
The provisions of subsection (a) of this section are not applicable in the case of any consumer credit report to be used in connection with -
(1) a credit transaction involving, or which may reasonably be expected to involve, a principal amount of $150,000 or more;
(2) the underwriting of life insurance involving, or which may reasonably be expected to involve, a face amount of $150,000 or more; or
(3) the employment of any individual at an annual salary which equals, or which may reasonably be expected to equal $75,000, or

more.

(c) Running of reporting period

(1) In general

The 7-year period referred to in paragraphs (4) and (6) of subsection (a) of this section shall begin, with respect to any delinquent account that is placed for collection (internally or by referral to a third party, whichever is earlier), charged to profit and loss, or subjected to any similar action, upon the expiration of the 180-day period beginning on the date of the commencement of the delinquency which immediately preceded the collection activity, charge to profit and loss, or similar action.

(2) Effective date

Paragraph (1) shall apply only to items of information added to the file of a consumer on or after the date that is 455 days after September 30, 1996.

(d) Information required to be disclosed

Any consumer reporting agency that furnishes a consumer report that contains information regarding any case involving the consumer that arises under title 11 shall include in the report an identification of the chapter of such title 11 under which such case arises if provided by the source of the information. If any case arising or filed under title 11 is withdrawn by the consumer before a final judgment, the consumer reporting agency shall include in the report that such case or filing was withdrawn upon receipt of documentation certifying such withdrawal.

(e) Indication of closure of account by consumer

If a consumer reporting agency is notified pursuant to section 1681s-2(a)(4) of this title that a credit account of a consumer was voluntarily closed by the consumer, the agency shall indicate that fact in any consumer report that includes information related to the account.

(f) Indication of dispute by consumer

If a consumer reporting agency is notified pursuant to section 1681s-2(a)(3) of this title that information regarding a consumer who was furnished to the agency is disputed by the consumer, the agency shall indicate that fact in each consumer report that includes the disputed information.

15 U.S.C. § 1681e. - Compliance procedures

(a) Identity and purposes of credit users

Every consumer reporting agency shall maintain reasonable procedures designed to avoid violations of section 1681c of this title and to limit the furnishing of consumer reports to the purposes listed under section 1681b of this title. These procedures shall require that prospective users of the information identify themselves, certify the purposes for which the information is sought, and certify that the information will be used for no other purpose. Every consumer reporting agency shall make a reasonable effort to verify the identity of a new prospective user and the uses certified by such prospective user prior to furnishing such user a consumer report. No consumer reporting agency may furnish a consumer report to any person if it has reasonable grounds for believing that the consumer report will not be used for a purpose listed in section 1681b of this title.

(b) Accuracy of report

Whenever a consumer reporting agency prepares a consumer report it shall follow reasonable procedures to assure maximum possible accuracy of the information concerning the individual about whom the report relates.

(c) Disclosure of consumer reports by users allowed

A consumer reporting agency may not prohibit a user of a consumer report furnished by the agency on a consumer from disclosing the contents of the report to the consumer, if adverse action against the consumer has been taken by the user based in whole or in part on the report.

(d) Notice to users and furnishers of information

(1) Notice requirement

A consumer reporting agency shall provide to any person -

(A) who regularly and in the ordinary course of business furnishes information to the agency with respect to any consumer; or

(B) to whom a consumer report is provided by the agency;

a notice of such person's responsibilities under this subchapter.

(2) Content of notice

The Federal Trade Commission shall prescribe the content of notices under paragraph (1), and a consumer reporting agency shall be in compliance with this subsection if it provides a notice under paragraph (1) that is substantially similar to the Federal Trade Commission prescription under this paragraph.

(e) Procurement of consumer report for resale

(1) Disclosure

A person may not procure a consumer report for purposes of reselling the report (or any information in the report) unless the person discloses to the consumer reporting agency that originally furnishes the report -

(A) the identity of the end-user of the report (or information); and

(B) each permissible purpose under section 1681b of this title for which the report is furnished to the end-user of the report (or information).

(2) Responsibilities of procurers for resale

A person who procures a consumer report for purposes of reselling the report (or any information in the report) shall -

(A) establish and comply with reasonable procedures designed to ensure that the report (or information) is resold by the person only for a purpose for which the report may be furnished under section 1681b of this title, including by requiring that each person to which the report (or information) is resold and that resells or provides the report (or information) to any other person -

  (i) identifies each end user of the resold report (or information);

  (ii) certifies each purpose for which the report (or information) will be used; and

  (iii) certifies that the report (or information) will be used for no other purpose; and

(B) before reselling the report, make reasonable efforts to verify the identifications and certifications made under subparagraph (A).

(3) Resale of consumer report to a Federal agency or department

Notwithstanding paragraph (1) or (2), a person who procures a consumer report for purposes of reselling the report (or any information in the report) shall not disclose the identity of the end-user of the report under paragraph (1) or (2) if -

(A) the end user is an agency or department of the United States Government which procures the report from the person for purposes of determining the eligibility of the consumer concerned to receive access or continued access to classified information (as defined in section 1681b(b)(4)(E)(i) of this title); and

(B) the agency or department certifies in writing to the person reselling the report that nondisclosure is necessary to protect classified information or the safety of persons employed by or contracting with, or undergoing investigation for work or contracting with the agency or department

15 U.S.C. § 1681g. - Disclosures to consumers

(a) Information on file; sources; report recipients

Every consumer reporting agency shall, upon request, and subject to section 1681h(a)(1) of this title, clearly and accurately disclose to the consumer:

(1) All information in the consumer's file at the time of the request, except that nothing in this paragraph shall be construed to require a consumer reporting agency to disclose to a consumer any information concerning credit scores or any other risk scores or predictors relating to the consumer.

(2) The sources of the information; except that the sources of information acquired solely for use in preparing an investigative consumer report and actually used for no other purpose need not be disclosed: Provided, That in the event an action is brought under this subchapter, such sources shall be available to the plaintiff under appropriate discovery procedures in the court in which the action is brought.

(3)

(A) Identification of each person (including each end-user identified under section 1681e(e)(1) of this title) that procured

a consumer report -

(i) for employment purposes, during the 2-year period preceding the date on which the request is made; or

(ii) for any other purpose, during the 1-year period preceding the date on which the request is made.

(B) An identification of a person under subparagraph (A) shall include -

(i) the name of the person or, if applicable, the trade name (written in full) under which such person conducts business; and

(ii) upon request of the consumer, the address and telephone number of the person.

(C) Subparagraph (A) does not apply if -

(i) the end user is an agency or department of the United States Government that procures the report from the person for purposes of determining the eligibility of the consumer to whom the report relates to receive access or continued access to classified information (as defined in section 1681b(b)(4)(E)(i) of this title); and

(ii) the head of the agency or department makes a written finding as prescribed under section 1681b(b)(4)(A) of this title.

(4) The dates, original payees, and amounts of any checks upon which is based any adverse characterization of the consumer, included in the file at the time of the disclosure.

(5) A record of all inquiries received by the agency during the 1-year period preceding the request that identified the consumer in connection with a credit or insurance transaction that was not initiated by the consumer.

(b) Exempt information

The requirements of subsection (a) of this section respecting the disclosure of sources of information and the recipients of consumer reports do not apply to information received or consumer reports furnished prior to the effective date of this subchapter except to the extent that the matter involved is contained in the files of the consumer reporting agency on that

date.

(c) Summary of rights required to be included with disclosure

(1) Summary of rights

A consumer reporting agency shall provide to a consumer, with each written disclosure by the agency to the consumer under this section –

(A) a written summary of all of the rights that the consumer has under this subchapter; and

(B) in the case of a consumer reporting agency that compiles and maintains files on consumers on a nationwide basis, a toll-free telephone number established by the agency, at which personnel are accessible to consumers during normal business hours.

(2) Specific items required to be included

The summary of rights required under paragraph (1) shall include -

(A) a brief description of this subchapter and all rights of consumers under this subchapter;

(B) an explanation of how the consumer may exercise the rights of the consumer under this subchapter;

(C) a list of all Federal agencies responsible for enforcing any provision of this subchapter and the address and any appropriate phone number of each such agency, in a form that will assist the consumer in selecting the appropriate agency;

(D) a statement that the consumer may have additional rights under State law and that the consumer may wish to contact a State or local consumer protection agency or a State attorney general to learn of those rights; and

(E) a statement that a consumer reporting agency is not required to remove accurate derogatory information from a consumer's file, unless the information is outdated under section 1681c of this title or cannot be verified.

(3) Form of summary of rights

For purposes of this subsection and any disclosure by a consumer reporting agency required under this subchapter with respect to consumers' rights, the Federal Trade Commission (after consultation with each Federal agency referred to in section

1681s(b) of this title) shall prescribe the form and content of any such disclosure of the rights of consumers required under this subchapter. A consumer reporting agency shall be in compliance with this subsection if it provides disclosures under paragraph (1) that are substantially similar to the Federal Trade Commission prescription under this paragraph.

(4) Effectiveness

No disclosures shall be required under this subsection until the date on which the Federal Trade Commission prescribes the form and content of such disclosures under paragraph (3)

15 U.S.C. § 1681i. - Procedure in case of disputed accuracy

(a) Reinvestigations of disputed information

(1) Reinvestigation required

(A) In general

If the completeness or accuracy of any item of information contained in a consumer's file at a consumer reporting agency is disputed by the consumer and the consumer notifies the agency directly of such dispute, the agency shall reinvestigate free of charge and record the current status of the disputed information, or delete the item from the file in accordance with paragraph (5), before the end of the 30-day period beginning on the date on which the agency receives the notice of the dispute from the consumer.

(B) Extension of period to reinvestigate

Except as provided in subparagraph (C), the 30-day period described in subparagraph (A) may be extended for not more than 15 additional days if the consumer reporting agency receives information from the consumer during that 30-day period that is relevant to the reinvestigation.

(C) Limitations on extension of period to reinvestigate

Subparagraph (B) shall not apply to any reinvestigation in which, during the 30-day period described in subparagraph (A), the information that is the subject of the reinvestigation is found to be inaccurate or incomplete or the consumer reporting agency determines that the information cannot be verified.

(2) Prompt notice of dispute to furnisher of information

(A) In general

Before the expiration of the 5-business-day period beginning on the date on which a consumer reporting agency receives notice of a dispute from any consumer in accordance with paragraph (1), the agency shall provide notification of the dispute to any person who provided any item of information in dispute, at the address and in the manner established with the person. The notice shall include all relevant information regarding the dispute that the agency has received from the consumer.

(B) Provision of other information from consumer

The consumer reporting agency shall promptly provide to the person who provided the information in dispute all relevant information regarding the dispute that is received by the agency from the consumer after the period referred to in subparagraph (A) and before the end of the period referred to in paragraph (1)(A).

(3) Determination that dispute is frivolous or irrelevant

(A) In general

Notwithstanding paragraph (1), a consumer reporting agency may terminate a reinvestigation of information disputed by a consumer under that paragraph if the agency reasonably determines that the dispute by the consumer is frivolous or irrelevant, including by reason of a failure by a consumer to provide sufficient information to investigate the disputed information.

(B) Notice of determination

Upon making any determination in accordance with subparagraph (A) that a dispute is frivolous or irrelevant, a consumer reporting agency shall notify the consumer of such determination not later than 5 business days after making such determination, by mail or, if authorized by the consumer for that purpose, by any other means available to the agency.

(C) Contents of notice

A notice under subparagraph (B) shall include -

(i) the reasons for the determination under subparagraph (A);

and

(ii) identification of any information required to investigate the disputed information, which may consist of a standardized form describing the general nature of such information.

(4) Consideration of consumer information

In conducting any reinvestigation under paragraph (1) with respect to disputed information in the file of any consumer, the consumer reporting agency shall review and consider all relevant information submitted by the consumer in the period described in paragraph (1)(A) with respect to such disputed information.

(5) Treatment of inaccurate or unverifiable information

(A) In general

If, after any reinvestigation under paragraph (1) of any information disputed by a consumer, an item of the information is found to be inaccurate or incomplete or cannot be verified, the consumer reporting agency shall promptly delete that item of information from the consumer's file or modify that item of information, as appropriate, based on the results of the reinvestigation.

(B) Requirements relating to reinsertion of previously deleted material

(i) Certification of accuracy of information

If any information is deleted from a consumer's file pursuant to subparagraph (A), the information may not be reinserted in the file by the consumer reporting agency unless the person who furnishes the information certifies that the information is complete and accurate.

(ii) Notice to consumer

If any information that has been deleted from a consumer's file pursuant to subparagraph (A) is reinserted in the file, the consumer reporting agency shall notify the consumer of the reinsertion in writing not later than 5 business days after the reinsertion or, if authorized by the consumer for that purpose, by any other means available to the agency.

(iii) Additional information

As part of, or in addition to, the notice under clause (ii), a consumer reporting agency shall provide to a consumer in writing not later than 5 business days after the date of the reinsertion -

(I) a statement that the disputed information has been reinserted;

(II) the business name and address of any furnisher of information contacted and the telephone number of such furnisher, if reasonably available, or of any furnisher of information that contacted the consumer reporting agency, in connection with the reinsertion of such information; and

(III) a notice that the consumer has the right to add a statement to the consumer's file disputing the accuracy or completeness of the disputed information.

(C) Procedures to prevent reappearance

A consumer reporting agency shall maintain reasonable procedures designed to prevent the reappearance in a consumer's file, and in consumer reports on the consumer, of information that is deleted pursuant to this paragraph (other than information that is reinserted in accordance with subparagraph (B)(i)).

(D) Automated reinvestigation system

Any consumer reporting agency that compiles and maintains files on consumers on a nationwide basis shall implement an automated system through which furnishers of information to that consumer reporting agency may report the results of a reinvestigation that finds incomplete or inaccurate information in a consumer's file to other such consumer reporting agencies.

(6) Notice of results of reinvestigation

(A) In general

A consumer reporting agency shall provide written notice to a consumer of the results of a reinvestigation under this subsection not later than 5 business days after the completion of the reinvestigation, by mail or, if authorized by the consumer for that purpose, by other means available to the agency.

(B) Contents

As part of, or in addition to, the notice under subparagraph (A), a consumer reporting agency shall provide to a consumer in writing before the expiration of the 5-day period referred to in subparagraph (A) -

(i) a statement that the reinvestigation is completed;

(ii) a consumer report that is based upon the consumer's file as that file is revised as a result of the reinvestigation;

(iii) a notice that, if requested by the consumer, a description of the procedure used to determine the accuracy and completeness of the information shall be provided to the consumer by the agency, including the business name and address of any furnisher of information contacted in connection with such information and the telephone number of such furnisher, if reasonably available;

(iv) a notice that the consumer has the right to add a statement to the consumer's file disputing the accuracy or completeness of the information; and

(v) a notice that the consumer has the right to request under subsection (d) of this section that the consumer reporting agency furnish notifications under that subsection.

(7) Description of reinvestigation procedure

A consumer reporting agency shall provide to a consumer a description referred to in paragraph (6)(B)(iii) by not later than 15 days after receiving a request from the consumer for that description.

(8) Expedited dispute resolution

If a dispute regarding an item of information in a consumer's file at a consumer reporting agency is resolved in accordance with paragraph (5)(A) by the deletion of the disputed information by not later than 3 business days after the date on which the agency receives notice of the dispute from the consumer in accordance with paragraph (1)(A), then the agency shall not be required to comply with paragraphs (2), (6), and (7) with respect to that dispute if the agency

(A) provides prompt notice of the deletion to the consumer by telephone;

(B) includes in that notice, or in a written notice that accompanies a confirmation and consumer report provided in accordance with subparagraph (C), a statement of the consumer's right to request under subsection (d) of this section that the agency furnish notifications under that subsection; and

(C) provides written confirmation of the deletion and a copy of a consumer report on the consumer that is based on the consumer's file after the deletion, not later than 5 business days after making the deletion.

(b) Statement of dispute

If the reinvestigation does not resolve the dispute, the consumer may file a brief statement setting forth the nature of the dispute. The consumer reporting agency may limit such statements to not more than one hundred words if it provides the consumer with assistance in writing a clear summary of the dispute.

(c) Notification of consumer dispute in subsequent consumer reports

Whenever a statement of a dispute is filed, unless there is reasonable grounds to believe that it is frivolous or irrelevant, the consumer reporting agency shall, in any subsequent consumer report containing the information in question, clearly note that it is disputed by the consumer and provide either the consumer's statement or a clear and accurate codification or summary thereof.

(d) Notification of deletion of disputed information

Following any deletion of information which is found to be inaccurate or whose accuracy can no longer be verified or any notation as to disputed information, the consumer reporting agency shall, at the request of the consumer, furnish notification that the item has been deleted or the statement, codification or summary pursuant to subsection (b) or (c) of this section to any person specifically designated by the consumer who has within two years prior thereto received a consumer report for employment purposes, or within six months prior thereto received a consumer report for any other purpose, which contained the deleted or disputed information

15 U.S.C. § 1681p. - Jurisdiction of courts; limitation of actions

An action to enforce any liability created under this subchapter may be brought in any appropriate United States district court without regard to the amount in controversy, or in any other court of competent jurisdiction, within two years from the date on which the liability arises, except that where a defendant has materially and willfully misrepresented any information required under this subchapter to be disclosed to an individual and the information so misrepresented is material to the establishment of the defendant's liability to that individual under this subchapter, the action may be brought at any time within two years after discovery by the individual of the misrepresentation

15 U.S.C. § 1681s-2. - Responsibilities of furnishers of information to consumer reporting agencies

(a) Duty of furnishers of information to provide accurate information

(1) Prohibition

(A) Reporting information with actual knowledge of errors

A person shall not furnish any information relating to a consumer to any consumer reporting agency if the person knows or consciously avoids knowing that the information is inaccurate.

(B) Reporting information after notice and confirmation of errors

A person shall not furnish information relating to a consumer to any consumer reporting agency if -

(i) the person has been notified by the consumer, at the address specified by the person for such notices, that specific information is inaccurate; and

(ii) the information is, in fact, inaccurate.

(C) No address requirement

A person who clearly and conspicuously specifies to the consumer an address for notices referred to in subparagraph (B) shall not be subject to subparagraph (A); however, nothing in subparagraph (B) shall require a person to specify such an address.

(2) Duty to correct and update information

A person who –

(A) regularly and in the ordinary course of business furnishes information to one or more consumer reporting agencies about the person's transactions or experiences with any consumer; and

(B) has furnished to a consumer reporting agency information that the person determines is not complete or accurate,

shall promptly notify the consumer reporting agency of that determination and provide to the agency any corrections to that information, or any additional information, that is necessary to make the information provided by the person to the agency complete and accurate, and shall not thereafter furnish to the agency any of the information that remains not complete or accurate.

(3) Duty to provide notice of dispute

If the completeness or accuracy of any information furnished by any person to any consumer reporting agency is disputed to such person by a consumer, the person may not furnish the information to any consumer reporting agency without notice that such information is disputed by the consumer.

(4) Duty to provide notice of closed accounts

A person who regularly and in the ordinary course of business furnishes information to a consumer reporting agency regarding a consumer who has a credit account with that person shall notify the agency of the voluntary closure of the account by the consumer, in information regularly furnished for the period in which the account is closed.

(5) Duty to provide notice of delinquency of accounts

A person who furnishes information to a consumer reporting agency regarding a delinquent account being placed for collection, charged to profit or loss, or subjected to any similar action shall, not later than 90 days after furnishing the information, notify the agency of the month and year of the commencement of the delinquency that immediately preceded the action.

(b) Duties of furnishers of information upon notice of dispute

(1) In general

After receiving notice pursuant to section 1681i(a)(2) of this title of a dispute with regard to the completeness or accuracy of any information provided by a person to a consumer reporting agency, the person shall -

(A) conduct an investigation with respect to the disputed information;

(B) review all relevant information provided by the consumer reporting agency pursuant to section 1681i(a)(2) of this title;

(C) report the results of the investigation to the consumer reporting agency; and

(D) if the investigation finds that the information is incomplete or inaccurate, report those results to all other consumer reporting agencies to which the person furnished the information and that compile and maintain files on consumers on a nationwide basis.

(2) Deadline

A person shall complete all investigations, reviews, and reports required under paragraph (1) regarding information provided by the person to a consumer reporting agency, before the expiration of the period under section 1681i(a)(1) of this title within which the consumer reporting agency is required to complete actions required by that section regarding that information.

(c) Limitation on liability

Sections 1681n and 1681o of this title do not apply to any failure to comply with subsection (a) of this section, except as provided in section 1681s(c)(1)(B) of this title.

(d) Limitation on enforcement

Subsection (a) of this section shall be enforced exclusively under section 1681s of this title by the Federal agencies and officials and the State officials identified in that section

28 U.S.C. § 543 – Oath of justices and judges

Each justice or judge of the United States shall take the following oath or affirmation before performing the duties of his office: "I ____________________, do solemnly swear (or affirm) that I will administer justice without respect to persons, and do equal right to the poor and to the rich, and that I will faithfully and impartially discharge and perform all the duties incumbent upon me as ___________ under the Constitution and laws of the United States. So help me God."

28 U.S.C. § 1291 – Final decisions of district courts

The courts of appeals (other than the United States Court of Appeals for the Federal Circuit) shall have jurisdiction of appeals from all final decisions of the district courts of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands, except where a direct review may be had in the Supreme Court.

28 U.S.C. § 1292 – Interlocutory decisions

(a) Except as provided in subsections (c) and (d) of this section, the courts of appeals shall have jurisdiction of appeals from:

(1) Interlocutory orders of the district courts of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands, or of the judges thereof, granting, continuing, modifying, refusing or dissolving injunctions, or refusing to dissolve or modify injunctions, except where a direct review may be had in the Supreme Court;

28 U.S.C. § 1331 – Federal question

The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

28 U.S.C. § 1332 – Diversity of citizenship; amount in controversy; costs

(a) The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of $75,000, exclusive of interest and costs, and is between –

citizens of different States;

citizens of a State and citizens or subjects of a foreign state;

citizens of different States and in which citizens or subjects of a foreign state are additional parties; and

a foreign state, defined in section 1603(a) of this title, as plaintiff and citizens of a State or of different States.

For the purposes of this section, section 1335, and section 1441, an alien admitted to the United States for permanent residence shall be deemed a citizen of the State in which such alien is domiciled.

(b) Except when express provision therefor is otherwise made in a statute of the United States, where the plaintiff who files the case originally in the Federal courts is finally adjudged to be entitled to recover less than the sum or value of $75,000, computed without regard to any setoff or counterclaim to which the defendant may be adjudged to be entitled, and exclusive of interest and costs, the district court may deny costs to the plaintiff and, in addition, may impose costs on the plaintiff.

(c) For the purposes of this section and section 1441 of this title - a corporation shall be deemed to be a citizen of any State by which it has been incorporated and of the State where it has its principal place of business, except that in any direct action against the insurer of a policy or contract of liability insurance, whether incorporated or unincorporated, to which action the insured is not joined as a party-defendant, such insurer shall be deemed a citizen of the State of which the insured is a citizen, as well as of any State by which the insurer has been incorporated and of the State where it has its principal place of business; and the legal representative of the estate of a decedent shall be deemed to be a citizen only of the same State as the decedent, and the legal representative of an infant or incompetent shall be deemed to be a citizen only of the same State as the infant or incompetent.

The word "States", as used in this section, includes the Territories, the District of Columbia, and the Commonwealth of Puerto Rico.

28 U.S.C. §1254(1) – Courts of appeals; certiorari; certified questions

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:
(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree.

28 U.S.C. § 1652 – State laws as rules of decision

The laws of the several states, except where the Constitution or treaties of the United States or Acts of Congress otherwise require or provide, shall be regarded as rules of decision in civil actions in the courts of the United States, in cases where they apply.

28 U.S.C. § 1654 – Appearance personally or by counsel

In all courts of the United States the parties may plead and conduct their own cases personally or by counsel as, by the rules of such courts, respectively, are permitted to manage and conduct causes therein.

FRAP 4(a)(2) – Filing Before Entry of Judgment

A notice of appeal filed after the court announces a decision or order – but before the entry of the judgment or order – is treated as filed on the date of and after the entry.

FRAP 4(a)(4)(B)(iii) : No additional fee is required to file an amended notice of appeal.

Fed.R.Civ.P. 54 – Judgments; Costs

(a) Definition; Form.

"Judgment" as used in these rules includes a decree and any order from which an appeal lies. A judgment shall not contain a recital of pleadings, the report of a master, or the record of prior proceedings.

(b) Judgment Upon Multiple Claims or Involving Multiple Parties.

When more than one claim for relief is presented in an action, whether as a claim, counterclaim, cross-claim, or third-party claim, or when multiple parties are involved, the court may direct the entry of a final judgment as to one or more but fewer than all of the claims or parties only upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment. In the absence of such determination and direction, any order or other form of decision, however designated, which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties shall not terminate the action as to any of the claims or parties, and the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties.

Federal Rules of Civil Procedure 65

(a) Preliminary Injunction.

(1) Notice.

No preliminary injunction shall be issued without notice to the adverse party.

(2) Consolidation of Hearing with Trial on Merits.

Before or after the commencement of the hearing of an application for a preliminary injunction, the court may order the trial of the action on the merits to be advanced and consolidated with the hearing of the application. Even when this consolidation is not ordered, any evidence received upon an application for a preliminary injunction which would be admissible upon the trial on the merits becomes part of the record on the trial and need not be repeated upon the trial. This subdivision (a)(2) shall be so construed and applied as to save to the parties any rights they may have to trial by jury.

(b) Temporary Restraining Order; Notice; Hearing; Duration.

A temporary restraining order may be granted without written or oral notice to the adverse party or that party's attorney only if (1) it clearly appears from specific facts shown by affidavit or by the verified complaint that immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party or that party's attorney can be heard in opposition, and (2) the applicant's attorney certifies to the court in writing the efforts, if any, which have been made to give the notice and the reasons supporting the claim that notice should not be required. Every temporary restraining order granted without notice shall be indorsed with the date and hour of issuance; shall be filed forthwith in the clerk's office and entered of record; shall define the injury and state why it is irreparable and why the order was granted without notice; and shall expire by its terms within such time after entry, not to exceed 10 days, as the court fixes, unless within the time so fixed the order, for good cause shown, is extended for a like period or unless the party against whom the order is directed consents that it may be extended for a longer period. The reasons for the extension shall be entered of record. In case a temporary restraining order is granted without notice, the motion for a preliminary injunction shall be set down for hearing at the earliest possible time and takes precedence of all matters except older matters of the same character; and when the motion comes on for hearing the party who obtained the temporary restraining order shall proceed with the application for a preliminary injunction and, if the party does not do so, the court shall dissolve the temporary restraining order. On 2 days' notice to the party who obtained the temporary restraining order without notice or on such shorter notice to that party as the court may prescribe, the adverse party may appear and move its dissolution or modification and in that event the court shall proceed to hear and determine such motion as expeditiously as the ends of justice require.

(c) Security.

No restraining order or preliminary injunction shall issue except upon the giving of security by the applicant, in such sum as the court deems proper, for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained. No such security shall be required of the United States or of an officer or agency thereof. The provisions of Rule 65.1 apply to a surety upon a bond or undertaking under this rule.

(d) Form and Scope of Injunction or Restraining Order.

Every order granting an injunction and every restraining order shall set forth the reasons for its issuance; shall be specific in terms; shall describe in reasonable detail, and not by reference to the complaint or other document, the act or acts sought to be restrained; and is binding only upon the parties to the action, their officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise.

O.C.G.A. § 9-5-1 – For what purposes injunctions may be issued

Equity, by a writ of injunction, may restrain proceedings in another or the same court, a threatened or existing tort, or any other act of a private individual or corporation which is illegal or contrary to equity and good conscience and for which no adequate remedy is provided at law.

O.C.G.A. § 9-5-4 – Grounds for restraining trespass

Equity will not interfere to restrain a trespass, unless the injury is irreparable in damages, or the trespasser is insolvent, or other circumstances exist which, in the discretion of the court, render the interposition of the writ necessary and proper, among which shall be the avoidance of circuity and multiplicity of actions.

O.C.G.A. § 9-5-10 – Perpetual injunction after hearing.

A perpetual injunction shall be granted only after hearing and upon a final decree.

O.C.G.A. § 9-11-19 – Joinder of persons needed for just adjudication.

Person to be joined if feasible. A person who is subject to service of process shall be joined as a party in the action if:

> (1) In his absence complete relief cannot be afforded among those who are already parties; or
>
> (2) He claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may:
>
>> (A) As a practical matter impair or impede his ability to protect that interest; or
>>
>> (B) Leave any of the persons who are already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of his claimed interest.

If he has not been so joined, the court shall order that he be made a party. If he should join as a plaintiff but refuses to do so, he may be made a defendant or, in a proper case, an involuntary plaintiff. If the joined party objects to venue and his joinder would render the venue of the action improper, he shall be dismissed from the action.

Determination by court whenever joinder not feasible. If a person, as described in paragraphs (1) and (2) of subsection (a) of this Code section, cannot be made a party, the court shall

> *(a)* determine whether in equity and good conscience the

action shall proceed among the parties before it or should be dismissed, the absent person being thus regarded as indispensable. The factors to be considered by the court include:

(1) To what extent a judgment rendered in the person's absence will be adequate;

(2) The extent to which, by protective provisions in the judgment, by the shaping of relief, or by other measures, the prejudice can be lessened or avoided;

(3) Whether a judgment rendered in the person's absence will be adequate;

(4) Whether the plaintiff will have an adequate remedy if the action is dismissed for nonjoinder; and

(5) Whether and by whom prejudice might have been avoided or may, in the future, be avoided

(b) Pleading reasons for nonjoinder. A pleading asserting a claim for relief shall state the names, if known to the pleader, of any persons, as described in paragraphs (1) and (2) of subsection (a) of this Code section, who are not joined and the reason why they are not joined.

(c) Exception of class actions. This Code section shall be subject to Code Section
9-11-23.

O.C.G.A. § 9-11-65.

(a) *Interlocutory injunction.*
NOTICE. No interlocutory injunction shall be issued without notice to the adverse party.

(1) CONSOLIDATION OF HEARING WITH TRIAL ON MERITS. Before or after the commencement of the hearing of an application for an interlocutory injunction, the court may order the trial of the action on the merits to be advanced and consolidated with the hearing of the application. Even when this consolidation is not ordered, any evidence received upon an application for an interlocutory injunction which would be admissible upon the trial on the merits shall become a part of the record on the trial and need not be repeated upon the trial. This paragraph shall be construed and applied so as to save any rights of the parties which they may have to trial by jury.

(b) *Temporary restraining order; when granted without notice; duration; hearing; application to dissolve or modify.* A temporary restraining order may be granted without written or oral notice to the adverse party or his attorney only if:

> (1) It clearly appears from specific facts shown by affidavit or by the verified complaint that immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party or his attorney can be heard in opposition; and
>
> (2) The applicant's attorney certifies to the court, in writing, the efforts, if any, which have been made to give the notice and the reasons supporting the party's claim that notice should not be required.

Every temporary restraining order granted without notice shall be endorsed with the date and hour of issuance, shall be filed forthwith in the clerk's office and entered of record, and shall expire by its terms within such time after entry, not to exceed 30 days, as the court fixes, unless the party against whom the order is directed consents that it may be extended for a longer period. In case a temporary restraining order is granted without notice, the motion for an interlocutory injunction shall be set down for hearing at the earliest possible time and shall take precedence the motion comes on for hearing, the party who obtained the temporary restraining order shall proceed with the application for an interlocutory injunction; and, if he does not do so, the court shall dissolve the temporary restraining order. On two days′ notice to the party who obtained the temporary restraining order without notice or on such shorter notice to that party as the court may prescribe, the adverse party may appear and move its dissolution or modification; and in that event the court shall proceed to hear and determine the motion as expeditiously as the ends of justice require.

(c) *Security.* As a prerequisite to the issuance of a restraining order or an interlocutory injunction, the court may require the giving of security by the applicant, in such sum as the court deems proper, for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been enjoined or restrained wrongfully. A surety upon a bond or undertaking under this Code section submits himself to the jurisdiction of the court and irrevocably appoints the clerk of the court as his agent upon whom any papers affecting his liability on the bond or undertaking may be served. His liability may be enforced on motion without the necessity of an independent action. The motion and such notice of the motion as the court prescribes may be served on the clerk of the court, who shall forthwith mail copies to the persons giving the security if their addresses are known.

(d) *Form and scope of injunction or restraining order.* Every order granting an injunction and every restraining order shall be specific in terms; shall describe in reasonable detail, and not by reference to the complaint or other document, the act or acts sought to be restrained; and is binding only upon the parties to the action, their officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them who receive notice of the order by personal service or otherwise.

(e) *When inapplicable.* This Code section is not applicable to actions for divorce, alimony, separate maintenance, or custody of children. In such actions, the court may make prohibitive or mandatory orders, with or without notice or bond, and upon such terms and conditions as the court may deem just.

O.C.G.A. § 10-6-60 – Principal bound for neglect and fraud of agent

The principal shall be bound for the care, diligence, and fidelity of his agent in his business, and hence he shall be bound for the neglect and fraud of his agent in the transaction of such business.

O.C.G.A. § 44-3-109(a) – Liens for assessments; notice and foreclosure; lapse; right to statement of assessments; effect of failure to furnish statement.

(a) All sums lawfully assessed by the association against any unit owner or condominium unit, whether for the share of the common expenses pertaining to that condominium unit, for fines, or otherwise, and all reasonable charges made to any unit owner or condominium unit for materials furnished or services rendered by the association at the owner's request to or on behalf of the unit owner or condominium unit, shall, from the time the same become due and payable, be the personal obligation of the unit owner and constitute a lien in favor of the association on the condominium unit prior and superior to all other liens whatsoever except:

(1) Liens for ad valorem taxes on the condominium unit;

(2) The lien of any first priority mortgage covering the unit and the lien of any mortgage recorded prior to the recording of the declaration;

(3) The lessor's lien provided for in Code Section 44-3-86; and

(4) The lien of any secondary purchase money mortgage covering the unit, provided that neither the grantee nor any successor grantee on the mortgage is the seller of the unit.

The recording of the declaration pursuant to this article shall constitute record notice of the existence of the lien, and no further recordation of any claim of lien for assessments shall be required.

(b) To the extent that the condominium instruments provide, the personal obligation of the unit owner and the lien for assessments shall also include:

(1) A late or delinquency charge not in excess of the greater of $10.00 or 10 percent of the amount of each assessment or installment thereof not paid when due;

(2) At a rate not in excess of 10 percent per annum, interest on each assessment or installment thereof and any delinquency or late charge pertaining thereto from the date the same was first due and payable;

(3) The costs of collection, including court costs, the expenses of sale, any expenses required for the protection and preservation of the unit, and reasonable attorney's fees actually incurred; and

(4) The fair rental value of the condominium unit from the time of the institution of an action until the sale of the condominium at foreclosure or until the judgment rendered in the action is otherwise satisfied.

(c) Not less than ten days after notice is sent by certified mail or statutory overnight delivery, return receipt requested, to the unit owner both at the address of the unit and at any other address or addresses which the unit owner may have designated to the association in writing, the lien may be foreclosed by the association by an action, judgment, and foreclosure in the same manner as other liens for the improvement of real property. The notice shall specify the amount of the assessments then due and payable together with authorized late charges and interest accrued thereon. Unless prohibited by the condominium instruments, the association shall have the power to bid on the unit at any foreclosure sale and to acquire, hold, lease, encumber, and convey the same. The lien for assessments shall lapse and be of no further effect, as to assessments or installments thereof, together with late charges and interest applicable thereto, which first become due and payable more than three years prior to the date upon which the notice contemplated in this subsection is given or more than three years prior to the institution of an action therefor if an action is not instituted within 90 days after the giving of the notice.

(d) Any unit owner, mortgagee of a unit, person having executed a contract for the purchase of a condominium unit, or lender considering the loan of funds to be secured by a condominium unit shall be entitled upon request to a statement from the association or its management agent setting forth the amount of assessments past due and unpaid together with late charges and interest applicable thereto against that condominium unit. Such request shall be in writing, shall be delivered to the registered office of the association, and shall state an address to which the statement is to be directed. Failure on the part of the association to mail or otherwise furnish such statement regarding amounts due and payable at the expiration of such five-day period with respect to the condominium unit involved to such address as may be specified in the written request therefor within five business days from the receipt of such request shall cause the lien for assessments created by this Code section to be extinguished and of no further force or effect as to the title or interest acquired by the purchaser or lender, if any, as the case may be, and their respective successors and assigns, in the transaction contemplated in connection with such request. The information specified in such statement shall be binding upon the association and upon every unit owner. Payment of a fee not exceeding $10.00 may be required as a prerequisite to the issuance of such a statement if the condominium instruments so provided.

(e) Nothing in this Code section shall be construed to prohibit actions maintainable pursuant to Code Section 44-3-76 to recover sums for which subsection (a) of this Code section creates a lien.

O.C.G.A. § 51-5-1 – Libel defined; publication prerequisite to recovery.

(a) A libel is a false and malicious defamation of another, expressed in print, writing, or signs, tending to injure the reputation of the person and exposing him to public hatred, contempt, or ridicule.

(b) The publication of the libelous matter is essential to recovery.